



**MASSACHUSETTS BAY
TRANSPORTATION
AUTHORITY**

REQUEST FOR PROPOSALS

RFP NO. 142F-20

**MIDLIFE OVERHAUL OF SIXTY NEW FLYER
FORTY-FOOT HYBRID BUSES**

DATE ISSUED: JANUARY 12, 2021

SOURCING EXECUTIVE: AIDAN FLYNN

Table of Contents

1. PROPOSAL INFORMATION.....	9
1.1. Invitation and Description of Work	9
1.2. U.S. Domestic Provisions	11
1.3. Bidder Requirement: Disadvantaged Business Enterprise (DBE) Participation Disadvantaged Business Enterprise (DBE) Participation Goal	11
1.4. Request for Proposals Timeline.....	12
1.5. MBTA Point of Contact and RFP Communications.....	12
1.6. Evaluation Criteria	12
1.7. Selection and Competitive Negotiation Process	13
1.8. Pre-Proposal Procedures	14
1.9. Preparation and Submittal of Proposals.....	15
1.10. Pre-Contractual Expenses.....	16
1.11. Bidder's Material Qualification.....	17
1.12. Proposal Opening	17
1.13. Late Submissions, Modifications and Withdrawals of Offers.....	17
1.14. Rejection of Proposals	17
1.15. MBTA Reservation of Rights	18
1.16. Appropriation Contingency	19
1.17. Appeal/Protest Procedures	19
1.18. Rules of Contact.....	19
2. ABBREVIATIONS AND DEFINITIONS.....	21
2.1. Abbreviations and Acronyms.....	21
2.2. Definitions	23
3. BUSINESS AND COMMERCIAL REQUIREMENTS	32
3.1. Award/Execution of Contract	32
3.2. Insurance Requirements.....	32
3.3. Performance Guarantee	33
3.4. Contractor Responsibility and Legal Requirements Applicable to Motorbus Manufacture	34
3.5. Permits and Licenses	35
3.6. Ongoing Compliance Obligations	35
3.7. Claims	36

3.8.	Disputes	36
3.9.	Claims and Disputes.....	37
3.10.	OEM Software.....	37
3.11.	Examination and Audit	38
3.12.	Inspection of Site(s)	38
3.13.	Contractor Furnished Facilities.....	38
3.14.	Transportation / Shipping.....	38
3.15.	Core / Scrap Credits.....	39
3.16.	Project Management Communications.....	39
4.	CONTROL OF PROCUREMENT.....	42
4.1.	Contract Plans.....	42
4.2.	Contractor's Schedule of Completion	42
4.3.	Project Schedule	42
4.4.	Delivery.....	43
4.5.	Incoming Inspection (Post-Delivery) Test.....	43
4.6.	Acceptance of Bus(es)	44
4.7.	Repairs After Non-Acceptance	45
4.8.	Final Acceptance of Vehicles	46
4.9.	Contractor's Drawings	46
4.10.	Contractor Furnished Materials	46
4.11.	Access to Documents.....	46
4.12.	Conformity with Plans and Specifications	47
4.13.	Access to Work and Records	47
4.14.	Project Photographs.....	47
4.15.	Further Obligations.....	47
5.	CONTROL OF MATERIALS	49
5.1.	Quality of Supply	49
5.2.	Trade Names and Alternatives	49
5.3.	Storage of Material and Preparation for Delivery	50
5.4.	Receipt of Contractor Furnished Equipment and Materials	51
5.5.	Patented Devices, Materials, Processes	51
5.6.	Warranties, Guarantees, Instruction Sheets and Parts List.....	51

6. CHANGE ORDERS.....	52
6.1. Proposed Changes in Work Scope (Change Orders).....	52
6.2. Costs for Work Scope Changes.....	52
6.3. Change Order or Amendment Authorization.....	53
6.4. Executed Change Orders and Amendments.....	53
6.5. Change Status Report.....	54
7. PAYMENTS.....	54
7.1. Basis for Payment	54
7.2. Schedule of Partial Payments	56
7.3. Liquidated Damages	57
7.4. Escalation of Pricing for OPTION 6 (Overhaul of 156 Additional Buses)	58
8. TECHNICAL SPECIFICATION	59
9. WARRANTY	59
9.1. Guarantee of End Products (Warranty).....	59
9.2. Additional and/or Extended Warranty Coverage.....	60
9.3. Serial Numbers	60
9.4. Extension of Warranty.....	61
9.5. Voiding of Warranty	61
9.6. Exceptions and Additions to Warranty.....	61
9.7. Pass-Through Warranty.....	61
9.8. Superior Warranty	62
9.9. Fleet Defects.....	62
9.10. Repair Procedures	62
9.11. On-site Warranty Coordinator.....	64
9.12. Warranty Reimbursement.....	64
9.13. Warranty After Repair/Replacement	65
9.14. Warranty Processing Procedures	65
9.15. Warranty Forms.....	66
9.16. Return of Parts.....	66
9.17. Warranty Work Tracking	66
10. QUALITY ASSURANCE / QUALITY CONTROL (QA/QC) REQUIREMENTS.....	67
10.1. Project Quality Assurance Plan.....	67

10.2.	Management Responsibility	68
10.3.	Documented Quality Management System	68
10.4.	Design Control	68
10.5.	Document Control	68
10.6.	Purchasing	69
10.7.	Product Identification and Traceability	69
10.8.	Process Control.....	70
10.9.	Inspection and Test Plan.....	70
10.10.	Inspection, Measuring and Test Equipment.....	71
10.11.	Inspection and Test Status	72
10.12.	Controlling Nonconforming Products and Services.....	72
10.13.	Corrective and Preventative Action.....	72
10.14.	Quality Records.....	73
10.15.	Quality Audits	73
10.16.	Training	73
10.17.	Use of Statistical Techniques.....	74
11.	CONTRACT TERMS AND CONDITIONS.....	75
11.1.	Contract Effective Start Date.....	75
11.2.	Personal Liability of Authority Official.....	75
11.3.	Hiring of MBTA Retirees	75
11.4.	Headings Not Binding	75
11.5.	Binding Effect.....	75
11.6.	Precedence of Documents	76
11.7.	Payments and Compensation.....	76
11.8.	Contractor Payment Mechanism.....	77
11.9.	Contract Termination, Suspension, Force Majeure.....	77
11.10.	Written Notice.....	79
11.11.	Record-keeping and Retention, Inspection of Records	79
11.12.	Assignment	80
11.13.	Subcontracting by Contractor	80
11.14.	Affirmative Action, Non-Discrimination in Hiring and Employment	81
11.15.	Indemnification.....	81

11.16.	Waivers.....	82
11.17.	Risk of Loss.....	82
11.18.	Forum, Choice of Law and Mediation	82
11.19.	Interpretation, Severability, Conflicts with Law, Integration	82
11.20.	Entire Agreement	82
11.21.	Contractor Certifications and Legal References	83
11.21.1.	MBTA and Contractor Ownership Rights	83
11.21.2.	Qualifications.....	83
11.21.3.	Business Ethics and Fraud, Waste and Abuse Prevention.....	83
11.21.4.	Collusion	83
11.21.5.	Public Records and Access.....	83
11.21.6.	Debarment.....	84
11.21.7.	Applicable Laws	84
11.21.8.	Tax Law Compliance	84
11.21.9.	Bankruptcy, Judgments, Potential Structural Changes, Pending Legal Matters and Conflicts ...	84
11.21.10.	Protection of Commonwealth Data, Personal Data and Information.....	84
11.21.11.	Corporate and Business Filings and Reports	85
11.21.12.	Employer Requirements.....	85
11.21.13.	Federal and State Laws and Regulations Prohibiting Discrimination.....	86
11.21.14.	Right-to-Know Law	86
11.21.15.	Other Damages.....	86
11.21.16.	Northern Ireland Certification	87
11.21.17.	Pandemic, Disaster or Emergency Performance	87
11.22.	Executive Orders.....	87
11.22.1.	Executive Order 481. Prohibiting the Use of Undocumented Workers on State Contracts	87
11.22.2.	Executive Order 130. Anti-Boycott.....	87
11.22.3.	Conflict of Interest and Executive Order 346. Hiring of State Employees By State Contractors	88
11.22.4.	Executive Order 444. Disclosure of Family Relationships with Other State Employees	88
11.22.5.	Executive Orders 523, 526, and 565.....	89
11.22.6.	Laws and Regulations Prohibiting Discrimination and Human Trafficking.....	89
11.23.	Supplemental Provisions	89
11.23.1.	Applicability	89
11.23.2.	Security Requirements	89

11.23.3.	Right-of-Way Safety Training Requirements.....	90
11.23.4.	Workplace Environment.....	91
11.24.	Federal Requirements	92
11.24.1.	Federal Transit Administration Required Clauses	92
11.24.2.	Federal Changes	94
11.24.3.	Fly America Requirements.....	94
11.24.4.	Buy America Requirements	94
11.24.5.	Charter Bus Requirements	96
11.24.6.	School Bus Requirements.....	96
11.24.7.	Cargo Preference Requirements	96
11.24.8.	Seismic Safety Requirements	98
11.24.9.	Special DOL Equal Employment Clause	99
11.24.10.	Energy Conservation Requirements.....	99
11.24.11.	Clean Water Requirements	99
11.24.12.	Bus Testing.....	100
11.24.13.	Pre-Award and Post-Delivery Audits Requirements.....	100
11.24.14.	Lobbying	104
11.24.15.	Access to Records and Reports.....	104
11.24.16.	Federal Changes	105
11.24.17.	Clean Air.....	106
11.24.18.	Recycled Products.....	106
11.24.19.	Davis-Bacon and Copeland Anti-Kickbacks Acts.....	106
11.24.20.	Contract Work Hours and Safety Standards Act	113
11.24.21.	No Government Obligation to Third Parties.....	114
11.24.22.	Program Fraud and False or Fraudulent Statements and Related Acts	114
11.24.23.	Termination & Cancellation.....	115
11.24.24.	Government-Wide Debarment and Suspension (Non-Procurement).....	115
11.24.25.	Privacy Act	116
11.24.26.	Civil Rights Requirements.....	117
11.24.27.	ADA Access Requirements.....	119
11.24.28.	Breaches and Dispute Resolution.....	120
11.24.29.	Patent and Rights in Data	121
11.24.30.	Transit Employee Protective Agreements	123

11.24.31.	Incorporation of Federal Transit Administration (FTA) Terms	124
11.24.32.	Drug and Alcohol Testing.....	124
11.24.33.	Metric Requirements.....	125
11.24.34.	National Intelligent Transportation Systems (ITS) Architecture and Standards	125
11.24.35.	Corridor Preservation	125
11.24.36.	Veterans Employment	125
11.24.37.	Air Quality / EPA and Fuel Economy.....	126
11.24.38.	Federal Tax Liability and Recent Felony Convictions.....	126
11.25.	Federal Requirements – Disadvantaged Business Enterprises.....	127
11.25.1.	Policy Statement.....	127
11.25.2.	Definitions	127
11.25.3.	Contractor Assurances.....	128
11.25.4.	Required Subcontract Provisions	128
11.26.	Terms & Conditions Signature	129
12.	TECHNICAL RESPONSE.....	130
12.1.	Technical Response Submission	130
12.2.	Technical Response Components.....	130
12.2.1.	Attachment 2: Technical Response Cover Letter	130
12.2.2.	Signatures	130
12.2.3.	Attachment 3: DBE Certification.....	130
12.2.4.	Attachment 4: Technical Response Certifications.....	131
12.2.5.	Attachment 5: Non-DBE Subcontractor List	131
12.2.6.	Signed Contract Terms and Conditions (RFP Section 11.26)	131
12.2.7.	Proof of Insurance	131
12.2.8.	Financial Statements	131
12.2.9.	Introduction.....	131
12.2.10.	Technical Proposal Requirements	132
12.2.11.	Exceptions, if any.....	138
12.2.12.	Promotional Literature	138
13.	PRICE PROPOSAL.....	138
13.1.	Price Proposal Submission.....	138
13.2.	Tax Exemption	138
13.3.	Price Proposal Components	139

1. PROPOSAL INFORMATION

1.1. Invitation and Description of Work

The Massachusetts Bay Transportation Authority (“MBTA” or “Authority”) invites Proposals from qualified Contractors to overhaul sixty (60) New Flyer (purchased in 2014-2015) XDE40 forty-foot buses, low-floor design comprised of mainly carbon steel structure and diesel/hybrid propulsion. The designated buses shall be overhauled/remanufactured in accordance with the requirements detailed in Technical Specification VE20-051.

All End Products must be in accordance with Technical Specification VE20-051 (“Technical Specifications” or “Specifications”). The Specifications do not purport to be a complete description of work conditions. The Contractor is required to advise MBTA of work conditions noted but not herein defined.

To be considered a complete and responsive Proposal, the Bidder must thoroughly address the base scope of work, Section 1.1 (A), and the scope of work for each option as outlined in Section 1.1 (B).

- A. **Base Proposal.** The End Products to be provided by the successful Bidder will include the overhaul of sixty (60) New Flyer (purchased in 2014-2015) XDE40 forty-foot hybrid buses, as well as New/Improved System and Component Training, Manuals, Special Tools, and any associated materials, equipment, and services.

Major project schedule milestones that must be met in the base Proposal include:

1. Pilot Bus (No. 1): Delivery of the Pilot Bus must be completed no later than 22 weeks from Notice to Proceed.
2. Serial Production Buses Nos. 2 – 60: Must commence delivery no later than 23 weeks from Notice to Proceed. The Contractor shall deliver Serial Production Buses at a rate at an average of 1.5 per buses per week.
3. All Contract Deliverables must be provided by the Contractor to the Authority per the schedule/requirements in Technical Specification VE20-051 Section 2.7.

Failure to comply with the above subjects the Contractor to Liquidated Damages as defined in Section 7.4. The point of delivery shall be the approved Local Bus Commissioning Site as defined in Section 4.6.

- B. **Options.** The Authority reserves the right to exercise one or more of the following Optional work scope items at contract award. If executed, Option(s) will be incorporated into the entire fleet of sixty (60) buses (excluding Option 6).

The following options shall become part of this requirement:

OPTION 1 - Additional Corrosion Protection Applications

MBTA reserves the right to exercise an option for the Contractor to provide two (2) additional inspections / corrosion protection applications at 24-month intervals in accordance with Technical Specification VE20-051.

OPTION 2 - Engine (Cummins) Extended Warranty

MBTA reserves the right to exercise an option for an additional three (3) year OEM extended warranty (terms be for a total of five (5) years and 200,000 miles from the acceptance of the vehicle) on all remanufactured Cummins engines in accordance with Technical Specification VE20-051.

OPTION 3 - License Plate Recognition (LPR) System

MBTA reserves the right to exercise an option to retrofit buses with a License Plate Recognition (LPR) System in accordance with Technical Specification VE20-051.

OPTION 4 – New Destination Signs

The Contractor shall install and integrate the latest Luminator Smart Series III destination sign solution. This includes materials procurement; and installation of new front, curbside, and rear destination signs and all related subcomponents including cables and harnesses. The Contractor is responsible for all costs associated with software and hardware updates/modifications.

OPTION 5 – Plug-in Hybrid Retrofit

The Contractor shall install and integrate a plug-in hybrid solution. This includes materials procurement; and installation of new on-board charging equipment and all related subcomponents including cables, harnesses, and connectors. The Contractor is responsible for all costs associated with software and hardware updates/modifications.

OPTION 6 – Overhaul of up to 156 Additional Buses

MBTA reserves the right to exercise an option to overhaul up to an additional one hundred fifty-six (156) Hybrid 40-foot buses of a similar configuration purchased from New Flyer in 2016-2017 in accordance with Technical Specification VE20-051. This option would be executed at the completion of overhaul of the 60 base hybrid buses in approximately 2022. A shortened design review process may be required as part of this option.

The following additional requirements and terms apply to all Options noted above:

1. Other cost factors, subject to the Authority's review and approval, may be considered in determining Option pricing.
2. All Option pricing remains subject to audit review and verification.
3. Regarding Option 6:
 - i. Upon request by the MBTA, the Contractor shall provide a Change Order Proposal containing the anticipated number of days from Notice to Proceed of Option 6 Overhaul of 156 MBTA buses to delivery of the Option Overhaul Fleet Pilot bus. The Change Order Proposal shall be provided within two weeks of receipt of the Authority's request.
 - ii. Delivery of the Option 6 Overhaul Pilot Bus must be completed no later than 22 weeks from Notice to Proceed.
 - iii. Delivery rate of Option 6 Overhaul of 156 MBTA buses shall be no less than two (2) buses per week. Actual delivery commencement shall be confirmed at Option 6 execution.

- iv. The Authority reserves the right to exercise one or more of Options 1 through 5 work scope items as part of the Option 6 Overhaul of 156 Additional buses at Option 6 contract award. If executed, Option(s) will be incorporated into the entire fleet of 156 Option Overhaul buses.
- v. The provisions of Section 7.3, Liquidated Damages, shall apply to the proposed Option 6 Overhaul bus delivery schedule if the Option 6 Overhaul of 156 MBTA buses is exercised by the Authority. Cost for any Option 6 Overhauled bus will not be greater than the base proposal Overhauled bus price plus escalation, as described below in Section 7.4.

1.2. U.S. Domestic Provisions

This contract may be financed in part by means of a grant under the Urban Mass Transportation Act of 1964, as amended, and administered by the U.S. Department of Transportation, Federal Transit Administration (FTA), under a Capital Grant Contract between the Authority and the United States. The provisions of an FTA funded contract will apply.

All questions concerning the contract between the Authority and the Contractors, including all proposals thereof, shall be governed by and decided according to the law application to government procurement under Capital Grant Contracts. Refer to FTA Circular 4220.1F entitled "Third Party Contracting Guidelines" for details.

Under the FTA Guidelines, the following protest procedures are applicable:

1. The FTA may entertain a protest that alleges that a grantee failed to have or follow its written appeal/protest procedures.
2. A protest must be filed with the FTA no later than 5 days after the protester knows or has reason to know that the grantee has failed to render a final decision.
3. A protest to FTA must be filed in accordance with FTA Circular 4220.1F, as amended.

NOTE: The Authority reserves the right to proceed with the procurement, in spite of the pending protest as set forth in FTA Circular 4220.1F, if such action is deemed in the best interest of the Authority.

1.3. Bidder Requirement: Disadvantaged Business Enterprise (DBE) Participation Disadvantaged Business Enterprise (DBE) Participation Goal

This Contract is subject to 49 CFR Part 26. Therefore, the Contractor is strongly encouraged to meet the requirements for DBE participation as set forth herein. These requirements are in addition to all other equal opportunity employment requirements of this Contract. The Authority shall make all determinations with regard to whether or not a Proposer's is in compliance with the requirements stated herein. In assessing compliance, the Authority may consider during its review of the Proposer's submission package, the Proposer's documented history of non-compliance with DBE requirements on previous contracts with the Authority.

The DBE participation goal for this Contract is set at 17%. This goal represents those elements of work under this Contract performed by qualified Disadvantaged Business Enterprises for amounts totaling not less than 17% of the total Contract price. Failure to meet the stated goal at the time of proposal submission may render the Proposer non-responsive. For the purpose of this Contract, the MBTA will accept only DBE's who are Certified, at the time of Proposal opening, by the Massachusetts Supplier Diversity Office (SDO) (formerly SOWMBA) as DBE's. (See Section 9.25)

1.4. Request for Proposals Timeline

RFP Release: **January 12, 2021**

Pre-Proposal Conference: **January 26, 2021**

Request for Clarification Deadline: **February 9, 2021**

Proposal Due Date: **February 25, 2021 @ 2:00PM EST**

The MBTA reserves the right to modify this timeline.

Requests for an extension of the Proposal Due Date must be submitted in writing, via email to vehicles@mbta.com with RFP 142F-20 in the subject line, to the attention of the Sourcing Executive **no later than ten (10) business days prior to the Due Date**. The MBTA reserves the right to determine whether to accept such requests. All Bidders will be notified through COMMBUYS of any extension granted.

1.5. MBTA Point of Contact and RFP Communications

MBTA's Procurement and Logistics Department will be the sole contact for prospective Bidders during the Proposal process. It will coordinate and direct all managerial, administrative, and technical processes and decisions.

The RFP Notice will be posted on the Commonwealth of Massachusetts' COMMBUYS site, www.commbuys.com as Bid Number **BD-21-1206-40000-40000-56470**. At the MBTA's discretion, information regarding the proposal may be posted at other sites.

The MBTA's Contracting Officer and point of contact for this RFP is Aidan Flynn, Sourcing Executive, at aflynn@mbta.com. Each Bidder must designate one individual to function as a point of contact with MBTA during the pre-Proposal period to facilitate communications and receipt of RFP documents and addenda, if issued.

1.6. Evaluation Criteria

The Evaluation Criteria are:

1. Technical Proposal, including in relative order of importance and maximum points:
 - a. Project Implementation Approach (35%)
 - b. Optional Work Scope (20%)
 - c. Project Schedule (15%)
 - d. Quality Assurance / Quality Control (10%)
 - e. Qualifications of Firm and Staff (10%)
 - f. Technical Description of Design Review and Production (10%)
2. Total Proposal Price, including all options

Award will be made to the Bidder who furnishes the Proposal, which in the opinion of the MBTA, provides the best value, meaning it is offered at a fair and reasonable price and it offers services and equipment best suited for the MBTA's requirements from a contractual and technical standpoint.

1.7. Selection and Competitive Negotiation Process

Proposals will be evaluated and awarded on a best value, competitive negotiated basis as described below. MBTA may request Bidder clarification of any minor informalities, irregularities, and apparent clerical mistakes. Any changes to the Response shall be evaluated at MBTA's sole discretion.

1. **Confidentiality:** All information received from each Bidder will be treated as confidential information and will not be distributed prior to Contract execution, other than for the purpose of evaluation of the Proposal. Bidders are advised that all Proposals received are subject to the Massachusetts Public Records Law, G.L.c.66.
2. **Technical Response Responsiveness Review:** MBTA reserves the right, in its sole discretion, to determine if a Proposal is responsive and the Bidder is responsible. In determining whether a Bidder has the ability to perform successfully under the terms and conditions of the proposed procurement, MBTA will consider such matters as the Bidder's integrity, compliance with public policy (e.g., EEO record, debarment status, etc.), record of past performance, and financial and technical resources.

Upon receipt, Technical Responses will be reviewed for responsiveness to the RFP requirements, including (i) deficiencies and minor informalities, irregularities, and apparent clerical mistakes which are unrelated to the substantive content of the Response; (ii) conformance to the RFP instructions regarding organization and format; and (iii) the responsiveness of the Bidder to the requirements set forth in this RFP.

To be considered a complete and responsive Proposal, the Bidder must thoroughly address the base scope of work, Section 1.1 (A), and the scope of work for each option as outlined in Section 1.1 (B).

Those Technical Responses not responsive to this RFP may, at MBTA's sole discretion, be excluded from further consideration and the Bidder will be so advised.

3. **Technical Proposal Evaluation:** Each Technical Evaluation Criterion will be evaluated by considering all information included in the Technical Proposal related to the criterion. This evaluation may, at MBTA's sole discretion, include requests for additional written information or clarification from any Bidder to assist in evaluation, including oral interviews, and references.

MBTA may, at its own expense and upon reasonable notice, visit and inspect current operations of the Bidder and/or any proposed subcontractors, including the premises, facilities, equipment, personnel and other resources, and carry out related appraisals as part of the Response evaluation.

Technical Proposals will be ranked, and those that most closely align with MBTA's Evaluation Criteria will advance to the Price Proposal Evaluation. MBTA, in its sole discretion, reserves the right to limit the number of Proposals that are advanced to a Price Proposal Evaluation to those that MBTA deems most responsive to MBTA's requirements.

4. **Price Proposal Responsiveness Review:** Price Proposals will be reviewed for responsiveness to RFP requirements, including (i) deficiencies and minor informalities, irregularities, and apparent clerical mistakes which are unrelated to the substantive content of the Response; (ii) conformance to the RFP instructions regarding organization and format; and (iii) the responsiveness of the Bidder to the requirements set forth in this RFP.

To be considered a complete and responsive Proposal, the Bidder must thoroughly address the base scope of work, Section 1.1 (A), and the scope of work for each option as outlined in Section 1.1 (B).

Those Price Proposals not responsive to this RFP may, at MBTA's sole discretion, be excluded from further consideration and the Bidder will be so advised.

5. **Price Proposal Evaluation:** This evaluation may, at MBTA's sole discretion, include requests for additional written information or clarification from any Bidder to assist in evaluation.
6. **Competitive Negotiation:** A decision is made to:
 - a. Move to Contract. MBTA may elect to award a Contract without negotiation.
 - b. Reject all Proposals in the best interest of MBTA.
 - c. Negotiate with Bidders within the competitive range and with compliant Proposals. The competitive range includes all Proposals which have a reasonable chance of being selected for award. If negotiation is used:
 - i. Each Bidder is formally notified in writing either that its Proposal is compliant and within the competitive range and when negotiations with that Bidder will commence, or that its Proposal is not compliant or not within the competitive range and is excluded from further consideration.
 - ii. The Contracting Officer determines whether negotiations will be conducted by written correspondence or by oral discussion. All meetings are held individually under the direction of the Contracting Officer.
 - iii. As part of negotiations, Bidders within the competitive range may modify their original Proposal and submit a revised Proposal or Best and Final Offer (BAFO), as directed by MBTA, by a common due date.
 - iv. Competitive Negotiation steps are repeated as required.
7. **Best Value Determination:** MBTA will, in its sole discretion, determine which Proposal or Proposals represents the "best value" based on an analysis of the results of the Technical Proposal Evaluation and the Price Proposal Evaluation.

1.8. Pre-Proposal Procedures

1. **Pre-Proposal Conference.** A *virtual* conference will be held on January 26, 2021 at 10:00 a.m. EST. Attendees will need to preregister via e-mail with Aidan Flynn, Sourcing Executive at vehicles@mbta.com to arrange access to the conference.
2. **Requests for Clarification (RFCs).** RFCs should be submitted using Attachment 1: Request for Clarification and sent by email to vehicles@mbta.com. The email subject line must be "RFP No. 142F-20 RFC" and the RFC document must be attached.
 - a. Only one question/clarification may be submitted per page on the RFC form.
 - b. All RFCs are must be submitted by the date listed in Section 1.3.
 - c. MBTA has no obligation to respond to RFCs.

3. **Contract Document Revisions.** If MBTA determines an issue or Request for Clarification warrants a response or a change to the Contract Documents, it will issue an Addendum. Any interpretation or revision to Contract Documents will be made only by an Addendum.
 - a. Addenda will be numbered sequentially and made available to Bidders on COMMBUYS.
 - b. The Bidder must acknowledge receipt of each Addendum by writing the Addendum number and date in the space provided on the Proposal Form and submitting the executed Form with their Proposal.
 - c. No officer, agent, or employee of the MBTA is authorized to amend any provision contained in this RFP, including the specifications, unless such amendment is issued as an Addendum.
 - d. Oral explanations or instructions are not binding.
 - e. MBTA reserves the right to revise or amend the Contract Documents in its best interests.

1.9. Preparation and Submittal of Proposals

A. **General.** Proposals must be in both electronic and paper copies, as detailed below:

1. The Bidder must submit its Proposal, in accordance with all instructions and guidelines, to the Contracting Officer, Massachusetts Bay Transportation Authority, 10 Park Plaza, Suite 2810, Boston, Massachusetts 02116 **no later than 2:00 p.m. EST, February 25, 2021.** In addition, an electronic copy of the Proposal must be submitted on COMMBUYS.
 - a. The Bidder bears full responsibility for ensuring proper delivery of all Proposal documents.
 - b. The Proposal will be valid for 180 business days from the Proposal due date. If MBTA requires additional time for review, MBTA reserves the right to extend the validity of the Proposal in increments of sixty (60) business days. Prices submitted remain in effect as originally submitted.
2. The Technical Response and the Price Proposal must be contained in separate sealed submittals, together submitted as an entire package endorsed as “RFP No. 142F-20 - Midlife Overhaul of 60 New Flyer Forty-Foot Hybrid Buses.”
 - a. The Technical Response must be submitted in the quantities described in Section 12.2, sealed, and clearly marked “RFP No. 142F-20: Technical Response – Midlife Overhaul of 60 New Flyer Forty-Foot Hybrid Buses.”
 - b. The Price Proposal must be submitted in original plus three (3) copies, all of which must be enclosed, sealed, and clearly marked “RFP No. 142F-20: Price Proposal – Midlife Overhaul of 60 New Flyer Forty-Foot Hybrid Buses.”
3. Electronic versions of both the Technical Response, including all components, and Price Proposal must be submitted on COMMBUYS as separate, clearly labeled files. Electronic copies of the Price Proposal should be provided both in PDF and Excel.

4. It is the Bidder's responsibility to ensure its Proposal is complete and correctly submitted.
5. As described in Section 12.2, two (2) original, certified copies of resolution, by-law, or Power-of-Attorney authorizing an Officer or Agent to sign on behalf of the Bidder must accompany the Proposal and any Contract which may ensue. All Proposals, Technical and Price, must be signed correctly with ink in the proper place provided. See Section 12 for additional requirements.

B. Technical Response.

1. Each copy of the Bidder's Technical Response must be inserted into a three-ring binder and organized as described in Section 12. The Evaluation Criteria for the Technical Proposal and the weighted scoring assigned to each area are described in Section 1.6.
2. Contractual Information. The Bidder must utilize and fully complete all Proposal forms included in this RFP and listed in Section 12, specifically Attachments 2, 3, 4, and 5.
3. The Bidder must meet all minimum requirements of the Contract Documents, including the components of Technical Response. The Bidder may, however, exceed the minimum requirements and may submit additional information describing its Proposal, within defined page limits (Section 12.1).

C. Price Proposal.

1. **Price Proposal.** Using Attachment 6: Price Proposal as specified in Section 13, the Bidder must specify a unit price in US dollars for each item for which a quantity is given.
 - a. In case of a discrepancy between the unit prices written in words and unit prices written in figures, the written words will govern.
 - b. The prices for any item, proposed and contracted for, unless otherwise noted or specified, must include full compensation for all materials, equipment tools, labor, and incidental work necessary to complete the items to the satisfaction of the MBTA.
 - c. All prices must be net, not subject to discount, and must include all royalties and costs arising from patents, trademarks, and copyrights involved in any way with the work.
 - d. The Price Proposal must include the cost of all applicable taxes, customs, duties, freight/transportation, and insurance for Delivery of Vehicles and all End Products.
 - e. The Price Proposal must be based upon the Schedule of Partial Payments described in Section 7.2.
 - f. The Bidder's submittal must be prepared as if it as Best and Final Offer. MBTA may award this Contract without negotiation if it determines it has received the best value Proposal in accordance with the Contract Documents.

1.10. Pre-Contractual Expenses

- A. MBTA will not be liable for any pre-contractual expense incurred by the Bidder, including but not limited to:
1. Preparing its Proposal in response to this RFP;
 2. Attending the Pre-Proposal Conference;

3. Submitting its Proposal to MBTA;
 4. Discussing or negotiating with MBTA any matter related to this Proposal; or
 5. Any other expenses incurred by the Bidder prior to any date of Award.
- B. The Proposal must not include any such expense as part of its Proposal price.

1.11. Bidder's Material Qualification

- A. It is the responsibility of the selected Bidder (Contractor) to furnish complete End Products, materials and specialties of the type, design, and performance to result in integrated, operating End Product units and/or systems in accordance with the Technical Specifications.
- B. The selected Contractor is fully responsible for the satisfactory delivery and operation of all equipment and materials covered by the contract Documents, whether manufactured by the Contractor or manufactured by a Subcontractor.
- C. The selected contractor must furnish evidence, if required by the Authority's Technical Project Manager, that equipment of comparable rating (or higher) to that which the Contractor proposed to furnish, has been in satisfactory operation in similar applications. This provision will not apply to materials supplied by MBTA.

1.12. Proposal Opening

There will not be a public opening of Technical Responses or Price Proposals.

1.13. Late Submissions, Modifications and Withdrawals of Offers

Any offer received at the Procurement and Logistics Department after the exact time specified for receipt as designated in Section 1.4 (Due Date) will not be considered.

Any modification of an offer, except a modification for "best and final" offer, is subject to the same conditions stated in Section 1.14.

Notwithstanding the above, a late modification of any otherwise successful offer that makes its terms more favorable to the Authority will be considered at any time it is received and may be accepted.

Proposals may be withdrawn by written notice to the Authority, or in person by the Bidder or an authorized representative of the Bidder at any time before award.

1.14. Rejection of Proposals

- A. Any Proposal not in conformity with the requirements of MBTA as described in the Contract Documents may be rejected. MBTA reserves the right to reject any or all Proposals.
- B. Proposals which fail to meet the requirements of Section 1, are incomplete, include modifications to the RFP specifications, terms and conditions, or which change the intent of this RFP are prohibited and may disqualify a Proposal.
- C. More than one Proposal from the same Bidder, whether the same or different names appear on the signature page, will not be considered.
- D. MBTA reserves the right to waive minor irregularities, errors, or technicalities in Proposals.

1.15. MBTA Reservation of Rights

In connection with this RFP, the MBTA reserves to itself all rights (which rights shall be exercisable by the MBTA in its sole discretion) available to it under applicable laws, including without limitation, with or without cause and with or without notice, the right to:

1. Modify the RFP process in its sole discretion to address applicable law and/or the best interests of the MBTA.
2. Develop the work to be performed under the Contract in any manner that it, in its sole discretion, deems necessary. If the MBTA is unable to negotiate a Contract to its satisfaction with a Bidder, it may negotiate with the Bidder with the next highest ranked proposal, terminate this RFP and pursue other developments or solicitations relating to the work to be performed under the Contract, or exercise such other rights under the provisions of Massachusetts law as it deems appropriate.
3. Cancel this RFP in whole or in part at any time prior to the execution by the MBTA of a Contract, without incurring any cost, obligations, or liabilities.
4. Issue a new Request for Proposals after withdrawal of this RFP.
5. Not select any Bidder or cancel this procurement.
6. Reject any and all submittals and Responses received at any time.
7. Modify all dates set or projected in this RFP.
8. Suspend and terminate Contract negotiations at any time and engage in negotiations with the Bidder with the next highest ranked proposal if negotiations are unsuccessful with the apparent successful Bidder.
9. Issue addenda, supplements, and modifications to this RFP.
10. Require confirmation or clarification of information furnished by a Bidder, require revised or additional information from a Bidder concerning its Response, and require additional information to clarify the Response submitted in response to this RFP.
11. Conduct presentations with Bidders, identify a short-list of Bidders, and conduct on-site visits at Bidder facilities.
12. Declare a competitive range, conduct discussions, and request Response revisions and best and final offers.
13. Seek or obtain data from any source that has the potential to improve the understanding and evaluation of the responses to this RFP.
14. Add or delete Bidder responsibilities from the information contained in this RFP.
15. Waive non-material deficiencies in a Response, accept and review a non-conforming Response, or permit clarifications, revisions, or supplements to a Response.
16. Negotiate with a Bidder without being bound by any provision in its Response or choose to award and/or execute the Contract without negotiations.
17. Disqualify any Bidder that changes its submittal without MBTA approval.
18. Disqualify any Bidder under this RFP for violating any rules or requirements of the procurement set forth in this RFP or in any other communication from MBTA.
19. Delay issuance of notice to proceed after execution of the Contract.
20. Conduct all or any portion of the Scope of Work itself.
21. Exercise any other right reserved or afforded to the MBTA under this RFP.

This RFP does not commit the MBTA to enter into a Contract or proceed with the procurement described herein. The MBTA assumes no obligations, responsibilities, and liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to and/or responding to this RFP.

In no event shall the MBTA be bound by, or liable for, any obligations with respect to the work to be performed under the Contract until such time (if at all) as the Contract, in form and substance satisfactory to the MBTA, has been executed and authorized by the MBTA and, then, only to the extent set forth therein; provided, however, that the foregoing disclaimer in this sentence shall not apply to the obligations of the MBTA to the Bidders during the procurement process, which obligations are expressly set forth in this RFP. In submitting a Response to the RFP, each Bidder is specifically acknowledging these disclaimers.

1.16. Appropriation Contingency

MBTA intends to seek federal funds for this Contract. If MBTA fails to attain federal assistance at any time, this Contract may not be awarded or may be terminated.

1.17. Appeal/Protest Procedures

Appeals/protests relative to this procurement will be reviewed and adjudicated in accordance with the MBTA's Appeals/Protest Procedure - Goods & Services. A copy of this procedure is available at www.mbta.com. In the event that this procurement is federally funded with financial assistance from the Federal Transit Administration (FTA), interested parties may elect to issue a protest to the FTA if the interested party believes that the MBTA failed to follow the protest procedures identified above after exhausting MBTA's appeals and protest procedure. These parties must exhaust all appeals and protest procedures with the MBTA first. Such protests to the FTA must be filed in accordance with FTA Circular 4220.1F, Chapter VII.

1.18. Rules of Contact

Starting on the date the RFP is issued and ending on the earliest of (a) the award and execution of the Contract, (b) rejection of all Responses by the MBTA, or (c) cancellation of the procurement, the following rules of contact shall apply. These rules are designed to promote a fair and unbiased procurement process. Contact includes face-to-face, telephone, email, or formal written communication.

The specific rules of contact are as follows:

1. No Bidder, or any of its team members, may communicate with another Bidder or its team members with regard to this RFP or either team's Response, except that subcontractors that are shared between two or more Bidder teams may communicate with their respective team members so long as those Bidders establish a protocol to ensure that the subcontractor will not act as a conduit of information between the teams. This prohibition does not apply to public discussions regarding the RFP at any MBTA sponsored Bidders' conferences.
2. No Bidder or representative thereof shall have any ex parte communications regarding the RFP, the Contract, or the procurement described herein with any member of the MBTA's Fiscal and Management Control Board ("FMCB"), the Massachusetts Department of Transportation ("MassDOT") Board of Directors, or with any MassDOT or MBTA staff, advisors, contractors, or consultants involved with the procurement, except for communications expressly permitted by the RFP or except as approved in advance at the MBTA's Point of Contact's sole discretion. The foregoing restriction shall not, however, preclude or restrict communications with regard to matters unrelated to the RFP, Contract, or procurement or from participation in public meetings of the MBTA FMCB or MassDOT Board of Directors or any public or Bidder workshop related to this RFP.
3. The Bidders shall not contact employees, representatives, and employees or other representatives of Jacobs regarding this RFP, the Contract, or the procurement.

4. Any communications determined by the MBTA, in its sole discretion, to be improper may result in disqualification.
5. Any official information regarding this RFP will be disseminated from the MBTA's Point of Contact via COMMBUY'S.
6. The MBTA will not be responsible for any oral exchange or any other information or exchange that occurs outside the official process specified herein.

2. ABBREVIATIONS AND DEFINITIONS

2.1. Abbreviations and Acronyms

Wherever the following abbreviations are used in these Contract Documents or on the Plans, they are to be construed the same as the respective expressions represented;

AA	Aluminum Association
ADA	American with Disabilities Act
AFI	Air Filter Institute
AISC	American Institute of Steel Construction
AISI	American Iron and Steel Institute
ANSI	American National Standards Institute (formerly ASA and USASI)
APA	American Plywood Association (formerly Douglas Fir Plywood Association)
API	American Petroleum Institute
APTA	American Public Transit Association
AREA	American Railway Engineering Association (formerly ARA)
ASA	American Standards Association
ASHRAE	American Society of Heating, Refrigeration and Air Conditioning Engineers
ASME	American Society of Mechanical Engineers
ASTM	American Society of Testing and Materials
ATA	Air Transportation Association of America
AWG	American Wire Gauge
AWPA	American Wood Preserving Association
AWS	American Welding Society
BLS	Bureau of Labor Statistics
CFR	Code of Federal Regulations
DOT	U.S. Department of Transportation
DPU	Department of Public Utilities (formerly DTE), Commonwealth of Massachusetts
EC	Emissions Control
ECD	Emissions Control Diesel
EIA	Electronic Industries Association
EPA	Environmental Protection Agency
FAA	Federal Aviation Administration
FAR	Federal Acquisition Regulations

FCC	Federal Communications Commission
FDA	Federal Drug Administration of the United States Department of Health and Human Services
FMCB	Fiscal and Management Control Board
FMCSR	Federal Motor Carrier Safety Regulations
FMVSS	Federal Motor Vehicle Safety Standards
FPR	Federal Procurement Regulations
FRA	Federal Railroad Administration
FTA	Federal Transportation Administration (formerly UMTA)
HSLA	High Strength Low Alloy
ICC	Interstate Commerce Commission
ICEA	Insulated Cable Engineers Association
IEC	International Electrotechnical Committee
IEEE	Institute of Electrical and Electronic Engineers
IES	Illuminating Engineering Society
IPCEA	Insulated Power Cable Engineers Association
IPS	Iron Pipe Size
ISO	International Standards Organization
JIC	Joint Industrial Council
LAHT	Low Alloy High Tensile Strength (Steel)
MassDOT	Massachusetts Department of Transportation
MBTA	Massachusetts Bay Transportation Authority
MIL	Military Specification
MGL	Massachusetts General Law
NBS	National Bureau of Standards
NCA	Noise Criterion, Alternate
NEC	National Electrical Code
NEMA	National Electrical Manufacturer's Association
NFPA	National Fire Protection Association
OEM	Original Equipment Manufacturer
PMCG	Proposal Modification and Clarification Guidelines
RFP	Request for Proposal
SAE	Society of Automotive Engineers
SDO	Supplier Diversity Office (formerly SOMWBA)
SIC	Standard Industrial Code, U.S. Department of Labor

STURAA	Surface Transportation and Uniform Relocation Assistance Act
TSC	Transportation Systems Center, DOT
VIC	International Union of Railways
UL	Underwriter's Laboratories, Inc.
UMTA	Urban Mass Transportation Administration, United States Department of Transportation (now FTA)
USPHS	United States Public Health Service of the United States Department of Health and Human Services

Note: Any Abbreviation or Acronym standard or code referenced shall act in conjunction with Technical Specification VE20-051

2.2. Definitions

Wherever the following terms are used in the Specifications or on the Plans, the intent and meaning shall be interpreted as follows;

1. Whenever in the Specifications or on the Plans the words "acceptable", "accepted", "approval", "approved", "authorized", "condemned", "considered-necessary", "deemed necessary", "designated", "determined", "directed", "disapproved", "established", "given", "indicated", "insufficient", "ordered", "permitted", "rejected", "required", "reserved", "satisfactory", "unacceptable", "unsatisfactory", or words of like import are used, it shall be understood as if such words were followed by the words in writing, "by the MBTA Technical Project Manager" or "to the MBTA Technical Project Manager", unless otherwise specifically stated.
2. Wherever the word "indicated" is used, it shall be understood to mean " as described in the Specifications", "as shown on the contract Plans", or "as required by the other Contract Documents."
3. Wherever the words "provided", "supplied", or "installed" are used in the Specifications in reference to work to be performed by the Contractor, it shall be understood to mean "furnished and delivered completed".

Note: Any definition reference herein shall act in conjunction with Technical Specification VE20-051

ACCEPTANCE. Reviewed for conformity to Specification and accepted, in writing, by the Authority.

ACCEPTED EQUAL or EQUAL. Whenever the words "accepted equal" or "equal" are used in connection with material or equipment in these Contract Documents including the Specifications, the proposed alternative shall be functionally compatible with and of equal or better quality than the item it proposed to replace. The MBTA Technical Project Manager's decision as to whether any material or equipment proposed is equal to that specified shall be binding on both the Authority and Contractor.

ADDENDUM/(ADDENDA). Written interpretation(s) or revision(s) of any of the Contract Documents sent to Offerors prior to submittal of proposals.

ADVERTISEMENT. The invitation to offer a bid for work to be performed or materials to be furnished.

ALTERATION. A change or substitution in the form, character, or detail of the work done or to be done within the original scope of the Contract.

AUTHORITY, or MBTA. Massachusetts Bay Transportation Authority, created by Chapter 563, Section 18 of the Acts of 1964 of the Commonwealth of Massachusetts, the party of the First Part to the Contract.

AUTHORIZED SIGNEE. The person who is executing the Contract on behalf on the Offeror/Contractor and who is authorized to bind the Offeror/Contractor.

BASE LINE DESIGN. The design of each type vehicle or any of its components, apparatus, systems, subsystems, or materials, which have received drawing acceptance and First Article acceptance by the Authority.

BASIC or MANUFACTURER'S STANDARD. Shall mean the component or part standard to be acceptable as part of the line-produced vehicle of the Contractor.

BENCHMARKING. The recalculation of compensation adjustments on account of changes in labor and/or material cost utilizing indices as set forth under the provisions of the RFP subsequent to the establishment of final published indices during the performance of this Contract or subsequent to the month(s) for which the option for additional cars is executed shall not be allowed.

BID. The Bidder, in response to the Authority's Invitation for Bids, including the Contract Documents with Specifications, to be submitted in the prescribed manner, properly signed and certified using the forms provided by the Authority as required and all data to be supplied by the Bidder to be in conformance with said Documents

BIDDER(S). Any individual, firm, partnership, corporation or joint venture submitting a Bid on the Form for Bid provided, for the work contemplated, acting directly or through a duly authorized representative

BID FORM.

- a. The approved form on which the Authority requires Bids to be prepared and submitted for the work, and which is part of the Bid heretofore defined.
- b. When executed by the Bidder, the Bid becomes the Contractor's written offer to perform the work and furnish and deliver the equipment/materials at the prices quoted.

BUS. A complete vehicle, that conforms to the Technical Specifications and is ready to operate.

BUYER. The Massachusetts Bay Transportation Authority.

CHANGE ORDER.

- a. A Contract Document executed by the Authority and issued to the Contractor amending the Contract Provisions and/or Specifications. The change order establishes the basis for payment and time adjustments, if any, of the work affected by the changes.
- b. The Document becomes a part of the Contract when executed by the Contractor and the Massachusetts Bay Transportation Authority. All terms and conditions of the Contract Documents

including the Specification remain as previously stated unless so noted in the text of the change order.

CHIEF PROCUREMENT OFFICER. Chief Procurement Officer for the Massachusetts Bay Transportation Authority, an official designated by the Authority to administer Contracts and make related determinations and findings such as executing Contracts and Change Orders.

COACH. (SEE BUS)

COMMBUYS. Internet-based official procurement platform for the Commonwealth of Massachusetts.

COMMONWEALTH. The Commonwealth of Massachusetts.

CONTRACT SKETCHES. An initial set of sketches showing the general car layout and arrangement provided by the Authority with the Specification.

CONDITIONAL ACCEPTANCE. The acceptance of the vehicles by the Authority at the designated delivery point after discrepancies listed on the Receiving Report have been sufficiently corrected to enable the vehicles to be certified for revenue service prior to final acceptance, per Section 3.30. The vehicle(s) remains conditionally accepted until it is totally responsive to the Specification requirements and corrective action(s) implemented to the Authority's satisfaction.

CONSULTANT OR CONSULTING ENGINEER. The engineering design consultant (firm) retained by the Authority to assist the Authority's Technical Project Manager and/or Engineer in the preparation of Plans and Specifications, proposal evaluation, review of Contractor-furnished drawings and documents, to furnish advice and assistance during the course of the procurement, and to furnish in-plant inspection services.

CONTRACT. The written agreement executed between the Authority, Party of the First Part, and the Contractor, Party of the Second Part, setting forth the obligations of the Parties thereunder, the performance of the procurement as indicated in the Proposal Documents and all authorized changes to this Contract issued subsequent to the execution of the Contract.

CONTRACT BOND. The Performance Bond executed by the Contractor and his surety or sureties, guaranteeing performance of the Procurement in accordance with the Contract and all subsequent agreements.

CONTRACT DOCUMENTS. The Contract Documents include the following: RFP, Contract Provisions, Technical Specifications, Concept Drawings, and Addenda; Contractor's Proposal, including any technical information submitted thereunder; Performance Guarantee; all applicable Contractual Affidavits and Certifications; and other pertinent document(s) as required - all of which constitute one instrument. Any Change Order that is subsequently executed shall make reference to and become part of the Contract.

CONTRACT TIME. The number of days allowed for completion of the Contract.

CONTRACTOR. The Prime Contractor solely responsible to the Authority for the quality and proper functioning of the vehicle(s) and all components; the person or persons, firm, partnership, corporation, or

combination thereof which has entered into this Contract with the Authority to supply the vehicle(s)/services.

CONTRACTOR'S DRAWINGS. Items such as general drawings, detail drawings, graphs, diagrams, sketches, calculations, and catalog cuts which are prepared by the Contractor to detail its work.

DAYS. Unless otherwise designated, days as used in the Contract Documents will be understood to mean calendar days.

DAY(S) WORKED. Those calendar days during which regular business is conducted, excluding Saturdays and Sundays, and all locally observed Federal, State, and Municipal holidays.

DEFECT. Patent or latent malfunction or failure in manufacture, design, or operation of any component or subsystem that causes a vehicle to cease operating or causes it to operate in a degraded mode.

DELIVERY. Receipt at the Authority of the vehicles in a sound, whole, ready to run condition. The Contractor shall complete and deliver all equipment and materials defined in the Contract Documents, to the Massachusetts Bay Transportation Authority, designated delivery point.

DELIVERY POINT. The location on the Authority's property to which the end products are expected to be delivered.

END PRODUCT.

- a. The Contract item(s) to be purchased by the Authority in accordance with the Contract Documents.
- b. End Product(s) includes, but is not limited to, drawings, specifications, instructions, books, education programs, spare parts and/or services.

ENGINEER. For this procurement the "Engineer" shall be embodied in the Authority's Technical Project Manager or by his designee.

EQUAL. Whenever the words "equal" or "accepted" are used in connection with make or quality of material or equipment in these Specifications, the Engineer's decision as to whether any material or equipment proposed is equal to that specified shall be binding on both the Contractor and the Authority.

FAIL SAFE.

- a. A characteristic of a system which insures that any malfunction affecting safety shall cause the system to revert to a state that is known to be safe.
- b. To be considered "fail safe", the systems shall also automatically furnish an acceptable indication in accordance with the Specification that a failure has occurred.

FAILURE. In relation to Reliability Test, it is an improper condition requiring the vehicle to be withheld from or removed from scheduled service for corrective action.

FINAL ACCEPTANCE OF VEHICLES. When all corrective actions and retrofit (if any) have been fully completed, and the vehicle is considered by the Authority to be fully compliant with the Contract.

FINAL ASSEMBLY. Installation and interconnections of propulsion control equipment, propulsion cooling equipment, brake equipment, energy sources for auxiliaries and controls, heating and air conditioning, communications equipment, motors, wheels and axles, suspensions and frames; the inspection and verification of all installation and interconnection work; and the testing in plant of the stationary product to verify all functions.

FIRST ARTICLE INSPECTION (FAI). The physical examination, acceptance, and commercial testing of, and acceptance by the Authority of an initial part, major assembly, subassembly, system, subsystem, apparatus, or material, manufactured or assembled by either the Contractor or Subcontractors. Although the exercise of First Article Inspection shall be at the Authority's option, the Contractor shall assume that the Authority shall subject all of the above to first article examination and acceptance.

FLEET DEFECT(S). As used in these Specifications, is defined as the failure of identical items by specific location and function on the vehicle, covered by the Warranty, and occurring in the warranty period, in a proportion of the vehicles delivered under this Contract.

HIDDEN DAMAGE. Damage in the Authority's opinion, not otherwise covered by the technical specifications and which cannot be observed by usual inspection or determined by other specified test until apparatus or material obstructing view is removed. Allowance for hidden damage is subject to the approval of the Authority.

INDICATED. As used in these Specifications, "Indicated" shall be understood to mean, "as shown on the Contract Drawings, as described in the Specifications, or as required by other Contract Documents.

INSPECTOR. Shall mean the representative(s) of the Massachusetts Bay Transportation Authority acting as a quality assurance representative assigned to the inspection of Materials and Workmanship under the Contract Documents.

INTERFACE. The points where two or more physical subsystems or systems meet to transfer energy or information.

MANUFACTURER. Shall mean the original manufacturer supplying materials, equipment, or apparatus for installation on the vehicles.

MATERIAL (SUPPLIES). Any substances specified for use in the construction and/or manufacture of the Procurement End Products(s), or to be furnished to the Authority as loose items as part of the Procurement.

NOTICE. Shall mean a written notice.

OFFEROR. See Bidder.

ORIGINAL EQUIPMENT MANUFACTURER(S). The original manufacturer of the Vehicles and all principle subcomponents and/or specific subsystems.

OVERHAUL. (See REMANUFACTURE)

OWNER OR PURCHASER. The Authority, as defined herein.

PARTY, PARTIES. Entity(ies) entering into the agreement.

PILOT BUS. (Bus No. 1) The first complete bus remanufactured by the Contractor to the base line design, which includes any and all modifications, developed during inspections, testing and first articles.

PLANS. The Authority's drawings (if included) as prepared by the Engineer, which supplement the Specifications and are a part of the Contract Documents; also called Contract Drawings.

PROCUREMENT (WORK).

- a. The remanufacturing or reconditioning of all equipment, items, materials, parts, systems, data, design, services, incidentals, labor, and management and performance of the Contractual requirements defined in the Contract Documents, including changes thereto, in order to produce and deliver the purchased End Product(s).
- b. As used herein, the terms Work and Procurement are synonymous.

PRODUCTION VEHICLES. All vehicles delivered during the contract with the exception of Prototype and/or Pilot Vehicles, as applicable to the scope of work.

PROGRAM. The total effort undertaken by the Authority of which the End Products may constitute a whole or a part.

PROJECT MANAGER FOR ENGINEERING. See Technical Project Manager.

PROOF (used as a suffix). Apparatus is designated as splash proof, dust proof, etc., when so constructed, protected, or treated that its successful operation is not interfered with when subject to the specified material or condition.

PROPOSAL. (SEE BID).

PROPOSAL FORM. (SEE BID FORM)

QUALIFY. As used in these Specifications shall be the determination that an assembly, sub-assembly, or any part thereof is satisfactory for continued service under the Contractor's warranty, or that the time is suitable for repair or overhaul to restore it to warrantable service, or that the item must be replaced with a new (or warrantable rebuilt) part.

REFERENCE. Where reference is made in the Contract Documents to publications or standards issued by associations or societies, the intent shall be to specify the current edition of such publications or standards in effect on the date of the Contract Advertisement, notwithstanding any reference to a particular date.

REHABILITATION

- a. Shall mean the restoration of items to new, as new, or reconditioned functionally, as the case may be, to the original manufacturer's recommendations
- b. Shall mean the complete disassembly of an assembly or sub-assembly into its component parts or to the degree defined in the individual sections of the Specifications.
- c. The cleaning, inspection and qualification for repair or replacement of the component parts.

d. The reassembly of the component parts into complete assemblies.

RELATED DEFECT - Damage inflicted on any component or subsystem as a direct result of a defect.

RELIABILITY. The probability of performing a specified function, without failure and within design parameters, for the period of time intended under actual operating conditions.

REMANUFACTURE. To recondition to OEM Specifications. The component or system in question does not necessarily need to be replaced with an all new component, but may be replaced with a rebuilt component that meets "as new" OEM specifications, or, the used/old component may be removed and reconditioned itself to meet "as new" OEM specifications

REPRESENTATIVE. Shall mean any duly authorized agent of the Authority or the Contractor.

RETROFIT. A fleet wide modification performed after Conditional Acceptance.

SECTION. Section refers to the indicated Section of the Contract Documents and Specifications plus all subsections thereof (unless the context indicates otherwise).

SERVICE, as in SERVICE USE. The operation of the vehicles under normal conditions with passengers.

SERVICE PROVEN. The historical success of that equipment operating for at least one year under similar conditions on other transit vehicles and has achieved a MMBF (Mean Miles Between Failures) consistent with the Authority's requirements.

SHOP DRAWINGS. Items, such as drawings, calculations, and catalog cuts, which are prepared by the Contractor to supplement or detail Contract Drawings or Specifications, or are prepared at Contractor's option to detail his work; or which the Contractor is required to submit to the MBTA Technical Project Manager for review, information, or record, including electrical schematics and wiring diagrams, fabrication, erection, layout, assembly, installation, tests, maintenance, and repair drawings.

SOURCING EXECUTIVE. The person designated by the Authority as its representative in matters pertaining to administrative aspects of the Contract such as pricing, payments, liquidated damages, change orders, etc.

STANDARD EQUIPMENT PROCUREMENT SPECIFICATIONS. This document of General Requirements and Covenants for Equipment Procurement.

STATE. The Commonwealth of Massachusetts.

STOCKPILE. A gradual accumulation of a reserve. For purposes of this Contract, no stockpiling of unaccepted vehicles on the Authority's property will be allowed.

SUBCONTRACTOR. An individual, firm, partnership, corporation or joint venture to whom the Contractor sublets any part, subsystem, component or hardware of the Contract.

SUPPLIER (VENDOR). The persons, firm, partnership or corporations who furnish materials/services to the Contractor. Supplier furnished materials/services shall comply with all the contract requirements.

NOTE: In the course of this Contract, the Authority may interchangeably use the words subcontractor, supplier, sub-supplier, vendor, as synonyms, all the aforementioned being under contract to the Contractor.

SURETY. The corporate body bound with and for the Contractor for the full and complete performance of the Contract and for the payment of all legal debts pertaining to the work, and who executed the Performance Bond(s) furnished by the Contractor.

SYSTEM INTEGRATION. A process that iteratively combines implemented system elements and subsystems to form a complete system configuration that functionally works together as expected and does not create unsafe conditions.

TECHNICAL PROJECT MANAGER (ENGINEER). The person designated by the Authority to be its liaison with the Contractor on all technical matters pertaining to work. The Technical Project Manager for Engineering shall be empowered to act on behalf of the Authority in such matters as acceptance of Contractor's drawings, test procedures, first article acceptance, and valid acceptance. Said person shall be designated in writing on official Massachusetts Bay Transportation letterhead.

TECHNICAL SPECIFICATIONS.

- a. Specifications pertaining generally to the method and manner of performing the work and/or the qualities and quantities of equipment and materials and End Product(s) to be furnished under the Contract.
- b. The technical specifications may include provisions adopted and issued by the Authority or may include other standards incorporated in the Contract Documents by reference.

TIGHT (used as a suffix). Apparatus is designated as watertight, dust tight, etc., when so constructed that the enclosing case will exclude the specified material.

U.S. DEPARTMENT OF TRANSPORTATION. U.S. Department of Transportation (DOT) means the Secretary of the (DOT) and other persons who may at the time be acting in the capacity of the Secretary, or authorized representative or any person otherwise authorized to perform the functions to be performed hereunder, including representatives of the Federal Transit Administration (FTA).

VALUE ENGINEERING. Proposals or submittals for evaluation that clearly describe or define new methodology, materials, or engineering techniques that significantly improve the vehicle/sub-system performance, life, or significantly reduces existing and future cost.

- a. Value engineering submittals are the direct result of Contractor or Subcontractor suggested improvements to vehicle standard, system, subsystem, methodology, materials or processing techniques that will result in significant cost savings, without any sacrifice in quality, reliability, or maintainability.
- b. Value engineering applicable to those areas of Contract responsibilities (i.e., best method of work performance, sequence and methodology of job performance, contracted engineering items, design restoration, etc.), as well as submittals that address alternatives to current method or means without significant improvement to design, function, performance or justifiable cost effective investments will not be considered.

- c. Submittals that originate from the Contractors or Subcontractors must clearly establish a cost savings. Submittals relative to the Contractual work, but not defined in the Contract Scope of Work, shall be applicable to fleet wide characteristics savings, and shall become the property of the MBTA upon acceptance.
- d. Submittals shall contain, as a minimum, the following:
 - (1) Background of suggested/affected change.
 - (2) Nature and measurement of value.
 - (3) Sufficient/adequate supportive documentation for evaluation.

VEHICLE. (SEE BUS)

VENDOR. (SEE SUPPLIER)

WORK (Procurement). Where the context will allow, the term "work" shall mean the production of goods and services furnished in accordance with the Contractor.

3. BUSINESS AND COMMERCIAL REQUIREMENTS

The following provisions are contractual and, by submitting a response to this RFP, Bidder agrees that the submission of their Bid with the signatures in the response forms (Sections 11, 12, and 13 and Attachments 2, 3, 4, 5, and 6) makes all certifications as outlined in the solicitation documents. This Bid shall constitute a binding offer open for acceptance by the MBTA.

3.1. Award/Execution of Contract

Since time is of the essence, the Authority reserves the right to issue a Notification of Award prior to formal execution of the Contract.

Prior to Contract execution:

- The MBTA will perform a Pre-Award Buy America Audit
- The required Performance Guarantee (Section 3.3) shall be furnished

Should the successful Bidder fail to furnish the Performance Guarantee and execute the Contract within the time stipulated, the Authority may, at its option, declare the successful Bidder to be in breach of its obligations.

Upon execution of the Contract by all parties, Notice to Proceed shall be issued. Contract execution shall be in place at the time of, or prior to, issuance of Notice to Proceed.

3.2. Insurance Requirements

A. The Contractor must carry and maintain, throughout the term of the Contract, including any extensions, the following minimum requirements:

1. The Contractor must carry **Commercial General Liability Insurance** for personal injury, bodily injury and property damage, including products liability and completed operations, with limits not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate covering all work and services performed under the Contract. This insurance must include all operations and contractual liability.
2. The Contractor must carry **Umbrella Policy** with limits of not less than \$10,000,000 per occurrence and in the aggregate, covering all work and services performed by the Contractor under this Contract
3. The Contractor must carry **Garage Coverage including Garagekeepers per ISO form CA 00 05 03 10 or equivalent** with limits not less than \$1,000,000 combined single limit, covering the use of all motor vehicles owned, leased, hired and non-owned under the Contract.
4. The Contractor must carry **Workers' Compensation Insurance**, including Employers' Liability Insurance as provided by MGL Chapter 152, as amended, covering all work performed in Massachusetts under the Contract. Such insurance must contain a waiver of any and all subrogation rights against MBTA.
5. The Contractor must carry and maintain **Cyber Network Security and Privacy Liability**, including but not limited to unauthorized access, failure of security, breach of privacy perils, wrongful disclosure, collection, or other negligence in the handling of confidential information,

- privacy perils, and including coverage for related regulatory defense and penalties in an amount not less than \$1,000,000.
6. If the Contractor is working on MBTA's property, the Contractor must carry **Pollution Liability Coverage** in an amount not less than \$1,000,000 for all hazardous materials including, but not limited to, those identified in the Contract Specifications.
 7. The Contractor must carry **Professional Liability (Errors & Omissions) Coverage** for wrongful acts and personal injury, bodily injury, and property damage liability resulting from design engineer errors, with limits not less than \$5,000,000 per occurrence and \$5,000,000 annual aggregate, covering all design and engineering work and professional services performed under the Contract.
- B. All liability policies must be written on an occurrence basis.
- C. All insurance carriers must have an A.M. Best rating of A- or greater.
- D. Insurance required of the Contractor must be provided by or on behalf of all Subcontractors to cover their operations performed under the Contract. The Contractor will be held responsible for any modifications, deviations, or omissions in these insurance requirements as they apply to Subcontractors. MBTA preserves the right to request and receive original policies within 30 days of request.
- E. The Contractor must include a waiver of subrogation rights against MBTA in its Workers' Compensation and Employers' Liability policies and must name MBTA as an additional insured under the Commercial General Liability, Automobile Liability, Excess Follow-Form Policy, and Pollution Liability.
- F. All insurance required under Section 3.2 will be primary and non-contributory from any insurance or self-insurance maintained by MBTA.
- G. Insurance Certificates for the above policies must be furnished to MBTA 7 working days prior to Contract execution.
- H. MBTA retains the right to request original, unredacted, certified copies of the above insurance policies at its sole discretion. The Contractor must provide these within 30 days of MBTA request.
- I. A minimum of 60 days' notice must be given to MBTA of a non-renewal, cancellation, or major change in any policy.

3.3. Performance Guarantee

A Performance Guarantee in the amount of **15%** of the contract shall be required by the Authority prior to execution of the Contract, unless otherwise agreed to by the Authority, to ensure the faithful performance of the Contract. The Performance Guarantee may be either a Performance Bond or an Irrevocable Stand-By Letter of Credit. The minimum requirements to be met by either performance guarantee are:

- The Performance Guarantee remains valid and in force until the 60th bus is accepted for revenue service.
- The Bidder must certify in writing with its proposal that a 15% Performance Bond or an Irrevocable Stand-By Letter of Credit will be furnished should the Bidder become the successful Contractor.

Prior to the execution of a Change Order for the Overhaul of 156 MBTA buses (OPTION 6), the Contractor must obtain and present evidence to MBTA of a Performance Guarantee in the amount of 15% of the Change Order value. This Performance Guarantee must remain valid and in force until all Option 6 Overhauled Vehicles are accepted for revenue service.

- A. Performance Bond

The Performance Bond is to be secured through an insurance company (or companies) which is/are licensed in the Commonwealth of Massachusetts or which is/are approved by the Authority. The insurance company must have an A.M. Best rating of A- or better. The name of the agency or agent writing the bond shall be identified with or on the bond.

B. Irrevocable Stand-By Letter of Credit

The Irrevocable Stand-By Letter of Credit shall be executed in a form approved by the Authority following Notice of Award but prior to Contract execution.

If the Contractor chooses to provide a Letter of Credit as its performance guarantee, the following terms must be met:

1. The Letter of Credit must be issued by a bank in good standing. The Authority will not accept a Letter of Credit from an entity other than a bank.
2. The Letter of Credit must be in writing and must be signed by the issuing bank.
3. The Letter of Credit must conspicuously state that it is an irrevocable, non-transferable, "standby" Letter of Credit.
4. Massachusetts Bay Transportation Authority must be identified as the Beneficiary of the Letter of Credit.
5. The effective date of the Letter of Credit must be the same as the effective date of the Contract.
6. The expiration date of the Letter of Credit must cover the time up to and including the acceptance of the 60th bus for the base award.
7. If awarded, the expiration date of the Letter of Credit must cover the time up to and including the acceptance of the Option 6 Overhaul 156th bus.
8. The Letter of Credit must indicate that it is being issued to support the obligation of the Contractor to perform under the Contract. It must specifically reference the Contract between the MBTA and the Contractor for the purchase of buses.
9. The issuing bank's obligation to pay will arise upon the presentation of the original Letter of Credit. This documentation will indicate that the Contractor is in default under the Contract. The above documents will be presented to the issuing bank's representative at a location and time to be determined by the parties.
10. Statement from banking institution certifying Letter of Credit for the action, if awarded, to be provided with submission.

3.4. Contractor Responsibility and Legal Requirements Applicable to Motorbus Manufacture

The coach shall meet, and the Contractor shall comply with all applicable Federal, State, and local regulations in effect for motorbuses at the date of manufacture. These include but may not be limited to FMVSS, ADA, EPA and all applicable FMCSR and NFPA regulations in effect at the time the NTP is issued. Local regulations are defined as those below the state level. In the event of any conflict between the requirements of this Specification and any applicable legal requirement, then the legal requirement shall prevail.

Notwithstanding, anything in the Contract to the contrary, it is understood and agreed to by the Contractor that the Authority provided the Technical Specification for the sole purpose of describing in general terms the performance required from each coach, each coach's systems and the discrete subsystems that make up the coach. The specification provided by the Authority does not in any way constitute a design of the coach or of such subsystems

or discrete components. It is further understood that the Authority makes no representations regarding the Technical Specifications. It shall be incumbent on the Contractor to verify the accuracy of the Technical Specifications prior to the time of the bid.

The Technical Specification is intended to leave the Contractor free to provide its own detail design application for all major subsystems and the Contractor shall assume complete and responsibility for the satisfactory operation and systems integration of the subsystems. The Contractor's responsibility includes but is in no way limited to; ensuring that the manufacture of the vehicle and the vehicles component parts are appropriate, coordinated, and compatible and that they perform correctly, whether together or individually.

The Contractor shall ensure that each subcontractor who will remanufacture major items of equipment (for example, engine, transmission, brakes, air conditioning, heating and cooling controls, doors and controls) has a complete copy of the Technical Specifications. Sub-suppliers shall approve of and sign-off on the Contractor's specific application of their components. Proof of sub-supplier's installation approval, for all major subsystems, shall be provided to the Authority. All Subcontractors and subsystem suppliers proposed by the Contractor to manufacture parts / systems are subject to the Authority's approval.

3.5. Permits and Licenses

The Contractor shall procure all permits and licenses in producing the end product, pay all charges, fees, and taxes, and give all notices necessary and incidental to the due and lawful prosecution of this Procurement.

3.6. Ongoing Compliance Obligations

Contractor Compliance. The Contractor shall keep fully informed and shall comply with the provisions of applicable federal, state, and municipal laws, rules, and regulations that in any manner regulate the Contractor's performance of this Contract and those engaged or employed with the services herein described, other than any such laws, rules and regulations that relate to MBTA's own operations. The Contractor shall indemnify, protect, defend, and save harmless MBTA and its officers, agents and employees harmless from all fines, penalties, and liabilities imposed upon MBTA under any such laws, rules, and regulations by any public agency, authority or court having jurisdiction over the parties hereto when the imposition of same is attributable to the failure of the Contractor to keep fully informed and to comply with its obligations in this regard, provided that if any public agency, authority or court seeks to impose such fine, penalty or liability on the MBTA, the MBTA shall promptly notify the Contractor and allow the Contractor, in consultation with the MBTA, to object to and defend such imposition.

Subcontractor Compliance. The Contractor shall be responsible for the compliance of its subcontractors/suppliers to the requirements of federal, state, and municipal laws, ordinances, rules, and regulations as may be applicable to the performance of such subcontractors or suppliers pursuant to this Agreement.

Change in Existing Law. The Contractor is subject to any existing or future valid legislative act, municipal ordinance, decree, order or regulation of any public body, commission or authority having jurisdiction over the MBTA, and order of decree by a court of competent jurisdiction to which the MBTA or any predecessor or successor in title may be a party, and, if the Contractor is unable to enjoy any or all of the privileges granted in the Contract, the MBTA shall not be liable to the Contractor in damages for breach of the Contract. The MBTA and the Contractor shall assess the impact any change in existing law may have on the price and schedule of the work herein defined and modify the Contract as needed in accordance with the Change Order provision of the Contract.

If any discrepancy or inconsistency is discovered in the Contract in relation to any law, ordinance, regulations, order or decree, Contractor shall forthwith report the same to the Authority in writing.

Contractor shall provide that changes in the Contract work, which are necessitated by laws or regulations that are enacted or promulgated after the Effective Date, shall constitute Contract changes in accordance with the Change Order provision of the Contract.

3.7. Claims

The Contractor shall give written notice to the MBTA of potential claim no later than thirty (30) calendar days from any act or event for which it intends to seek adjustment in payment, terms, or schedule and for which said matter is not disposed of by agreement through a Change Order. The written notice shall set forth the basis of the claim in sufficient detail to allow the MBTA to thoroughly evaluate the situation and shall provide an estimate of any costs involved. The Contractor shall also furnish any additional information relating to the claim as the MBTA may reasonably request. The MBTA shall respond to the claim within thirty (30) calendar days of receipt of said claim.

It is an essential part of this Contract that the Contractor performs fully, entirely, and in an acceptable manner, the work required under the Contract within the times stipulated. Therefore, the Contractor hereby agrees that it shall have no claim for damages of any kind on account of any delay in commencement of the work or any delay or suspension of any portion thereof, except as hereinafter provided.

In case the commencement of the work is delayed or any part thereof is delayed or suspended by the Authority (except for reasons caused the fault or neglect of the Contractor), the Contractor shall be granted an extension of time in which to complete the work, less a reasonable period of time within which the Contractor could have done necessary preliminary work.

If performance of all or any major portion of the work is suspended, delayed or interrupted for any unreasonable period of time by an act or failure to act by the Authority in the administration of the Contract as required by the Contract, and without the fault or negligence of the Contractor, an adjustment to the Contract shall be made by the Authority, in accordance with the Change Order provisions of Section 6. The Contractual adjustment may be for: (1) an extension of time; and/or (2) an increase or decrease in the actual cost of performance of the Contract.

No adjustments to the Contract shall be made if performance by the Contractor would have been prevented by other causes even if the work had not been suspended, delayed or interrupted by the Authority.

Any dispute concerning whether the delay or suspension is unreasonable or any other question of fact arising under this section shall be determined by the Authority. Such determination shall be a condition precedent to the right of the Contractor to receive any cost adjustment hereunder.

The decision of the Authority shall be final and conclusive unless within thirty (30) days of receipt of the Authority's decision the Contractor mails or delivers to the Authority a written notice of rejection, in which event the decision of the Authority shall have no further effect and either party may have the dispute and the subject matter thereof settled in accordance with the provision of Section 3.9 (Disputes).

3.8. Disputes

The MBTA and the Contractor intend to resolve all disputes under this Agreement to the best of their abilities in an informal manner. To accomplish this end, the parties will use an Alternative Dispute Resolution process to resolve disputes in a manner designed to avoid litigation. In general, the parties contemplate that the Alternative Dispute Resolution process will include, at a minimum, an attempt to resolve disputes through communications between their staffs, and, if resolution is not reached at that level, a procedure for review and action on such disputes by appropriate management level officials within the MBTA and the Contractor's organization. In the event that a

resolution of the dispute is not mutually agreed upon, the parties can agree to mediate the dispute or proceed with litigation. Notwithstanding any provision of this section, or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the Contract shall be heard by a Court *de novo* and the court shall not be limited in such proceeding to the issue of whether the Authority acted in an arbitrary, capricious or grossly erroneous manner. Pending final settlement of any dispute, the parties shall proceed diligently with the performance of the Contract, and in accordance with the Authority's direction or decisions made thereof.

3.9. Claims and Disputes

Any dispute arising at any time under the Contract Documents which is not disposed of by agreement through a Change Order, Section 6 shall be decided in the first instance by the Authority, as described above, who shall reduce its decision to writing without unreasonable delay.

1. If the Contractor fails to submit a claim within twenty-one (21) working days of the Authority's dispute of the Change Order request, that claim shall be deemed waived by the Contractor without further recourse.
2. Any other claim must be brought to the attention of the Authority within fifteen (15) working days of the event which raised the claim. If the Contractor fails to bring the claim within the fifteen (15) working day period, the claim shall be deemed waived by the Contractor without further recourse.

The decision of the Authority shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copies thereof, the Contractor mails or delivers to the Authority a written notice of rejection, in which event the decision of the Authority shall have no further effect and either party may have the dispute and the subject matter thereof settled by a court of competent jurisdiction.

In the event the Authority fails to make a decision as aforesaid on any dispute within a reasonable period after having been requested to do so by the Contractor, then either party may have the dispute and the subject matter thereof settled directly by a court of competent jurisdiction.

Pending final settlement of any dispute, both parties shall proceed diligently with the performance of the Contract and in accordance with the Authority's decision, if any.

Notwithstanding any provisions of this section or any other provision of this Contract, it is expressly agreed and understood that any court proceeding arising out of a dispute under the contract shall be heard by a Court *de novo* and the court shall not be limited in such proceeding to the issue of whether the Authority acted in an arbitrary, capricious or grossly erroneous manner.

Nothing mentioned above precludes the parties from informally resolving a claim or dispute or prevents a negotiated settlement of a claim or dispute prior to resolution by the courts.

3.10. OEM Software

Upon execution of the Contract, the Contractor shall provide the Agency a list of all OEM software comprising proprietary works ("Proprietary Software") for all major vehicle subsystems. From time to time and only upon request, information contained within the listed software may be made available to the Agency through the OEM of the vehicle subsystem. The Contractor and OEM are not obligated to provide copies of source code, as this is proprietary intellectual property; however, the Contractor is obligated to assist the Agency with any technical assistance for the duration of the life of the vehicle. It is the Agency's prerogative to evaluate the long-term viability

of the Contractor and its Subcontractors and Suppliers based upon the criteria set forth in “Qualification Requirements.”

3.11. Examination and Audit

The Contractor shall maintain and require its subcontractors to maintain, in accordance with generally accepted accounting principles, books, records, and other compilations of data pertaining to the Contractor’s services, delivery of materials, and other items in such detail as to substantiate claims for payment or for collections on behalf of the Authority under this Contract. Upon reasonable advance written notice, the General Manager of the MBTA or his designated representative (including private auditing firm) shall have the right to examine and audit all data and records of the Contractor relating to its performance under the Contract.

The Contractor, upon seven (7) days’ advance written notice by the MBTA, shall make available at its local office to MBTA personnel, its representatives or other authorized agencies, all records and data maintained by the Contractor for the purposes of performing financial, compliance, and performance audits related to the reimbursable costs under this Agreement. The Contractor shall maintain all books, records, accounts and reports required under this Contract for a period of at not less than three (3) years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract until the disposition of all such litigation, appeals, claims or exceptions related thereto.

3.12. Inspection of Site(s)

The Authority and/or its representatives shall have access to the site of the bus overhaul facility and shall have the right to inspect all project work.

3.13. Contractor Furnished Facilities

The Contractor shall provide appropriate office space for the Resident Inspectors in close proximity to the final assembly area. This office space shall be equipped with a desk, desk chair, file cabinet, and internet access. The Contractor shall also make available outside and interplant telephones, copier, facsimile machine, and storage area to accommodate the resident inspectors’ workday belongings as required. The office shall be appropriately heated in the winter and air conditioned in the summer. The Resident Inspector shall have access to rest room facilities. The Resident Inspector shall have direct 24 hour, 7-day access to his office by automobile.

The Contractor shall furnish and maintain at Contractor’s expense facilities for the use of the Authority’s Engineers and Inspectors for the duration of the Contract at the Contractor’s production facility and final assembly/final staging area if applicable in accordance with the Technical Specification No. VE20-051. The Contractor shall provide appropriate space to support the First Article Inspection and any subsequent production facility visits for the Authority’s team of Engineers and Inspectors.

3.14. Transportation / Shipping

For all parts and assemblies provided by the Authority for use in this program (including “float” components for use as rotatable spares), the Contractor shall arrange for and is responsible for the cost of transport from the Authority’s property to the Contractor’s facility. Examples of parts and assemblies which shall require transportation include but are not limited to engines, transmissions, cores, etc.

The Contractor shall arrange for and is responsible for the cost of the transportation for all buses from the Authority's property to the Contractor's facility and back. The Authority may approve the option to allow the bus to be driven to and from the Contractor's facility, if the distance from the Authority to the Contractor is less than 100 road miles each way.

3.15. Core / Scrap Credits

Certain major components and systems being replaced in this overhaul retain a significant amount of value. Therefore, the Contractor is required to provide the Authority an appropriate credit for these items. The credit shall be equivalent to the value recovered by the Contractor, less a 15% handling fee. A listing of components and the fair and appropriate related credits shall be presented to the Authority for approval at the Initial Design Review meeting. [CDR #9]

3.16. Project Management Communications

The Contractor shall use the Internet web-based project management communications tool, E-Builder® ASP software, and protocols included in that software during this project. The use of project management communications as herein described does not replace or change any contractual responsibilities of the participants.

1. Project management communications is available through E-Builder® as provided by "e-Builder®" in the form and manner required by the Authority.
2. The project communications database is on-line and fully functional. User registration, electronic and computer equipment, and Internet connections are the responsibility of the Contractor. The sharing of user accounts is prohibited.

E-Builder® will provide a group training session scheduled by the Authority, the cost of which is included in the initial user's fee. Users are required to attend the scheduled training sessions they are assigned to. Requests for specific scheduled classes will be on a first come first served basis for available spaces. The Contractor may also obtain group training from E-Builder at their own expense and would need to contact E-Builder® for availability and cost.

1. Support: E-Builder® will provide on-going support through on-line help files.
2. Nothing in this specification or the subsequent communications supersedes the parties' obligations and rights for copyright or document ownership as established by the Contract Documents. The use of CAD files, processes or design information distributed in this system is intended only for the project specified herein.
3. The intent of using E-Builder® is to improve project work efforts by promoting timely initial communications and responses. Secondly, to reduce the number of paper documents while providing improved record keeping by creation of electronic document files

Access to the web site will be by individuals who are licensed users.

1. Individuals may use the User Application included in these specifications or may request the User Application.
2. Submit completed user application forms with check made payable to "e-Builder, Inc.".
3. Authorized users will be contacted directly by the web site provider, E-Builder®, who will assign the temporary user password.
4. Individuals shall be responsible for the proper use of their passwords and access to data as agents of the company in which they are employed.

Administrative users have access and control of user licenses and all posted items. DO NOT POST PRIVATE OR YOUR COMPANY CONFIDENTIAL ITEMS IN THE DATABASE! Improper or abusive language toward any party or repeated posting of items intended to deceive or disrupt the work of the project will not be tolerated and will result in deletion of the offensive items and revocation of user license at the sole discretion of the Administrative User(s).

The use of fax, email and courier communication for this project is discouraged in favor of using E-Builder® to send messages. Communication functions are as follows:

1. Document Integrity and Revisions:

- a. Documents, comments, drawings and other records posted to the system shall remain for the project record. The authorship time and date shall be recorded for each document submitted to the system. Submitting a new document or record with a unique ID, authorship, and time stamp shall be the method used to make modifications or corrections.
- b. The system shall make it easy to identify revised or superseded documents and their predecessors.
- c. Server or Client-side software enhancements during the life of the project shall not alter or restrict the content of data published by the system. System upgrades shall not affect access to older documents or software.

2. Document Security:

- a. The system shall provide a method for communication of documents. Documents shall allow security group assignment to respect the contractual parties communication except for Administrative Users. DO NOT POST PRIVATE OR YOUR COMPANY CONFIDENTIAL ITEMS IN THE DATABASE!

3. Document Integration:

- a. Documents of various types shall be logically related to one another and discoverable. For example, requests for information, daily field reports, supplemental sketches and photographs shall be capable of reference as related records.

4. Reporting:

- a. The system shall be capable of generating reports for work in progress, and logs for each document type. Summary reports generated by the system shall be available for team members.

5. Notifications and Distribution:

- a. Document distribution to project members shall be accomplished both within the extranet system and via email as appropriate. Project document distribution to parties outside of the project communication system shall be accomplished by secure email of outgoing documents and attachments, readable by a standard email client.

6. Required Document Types:

- a. Submittals, including record numbering by drawing and specification section
- b. Transmittals, including record of documents and materials delivered in hard copy
- c. Meeting minutes
- d. Application for payments
- e. Review comments
- f. Test reports
- g. Inspection results
- h. Quality documents
- i. Drawings

- j. Schedules
- k. Specifications
- l. Correspondence letters

Except for paper documents, which require original signatures and large format documents (greater than 8½ x 11 inches), all other 8½ x 11 inches documents shall be submitted by transmission in electronic form to the E-Builder® web site by licensed users.

1. The Contractor and his representatives, the Project Manager and his representatives, at every tier shall respond to documents received in electronic form on the web site and consider them as if received in paper document form.
2. The Contractor and his representatives, the Project Manager and his representatives, at every tier reserves the right to and shall reply or respond by transmissions in electronic form on the web site to documents actually received in paper document form.
3. The Contractor and his representatives, the Project Manager and his representatives, at every tier reserves the right to and shall copy any paper document into electronic form and make same available on the web site.
4. The following are some but not all of the paper documents which require original signature or use of an MBTA-approved electronic signature solution:
 - a. Contract
 - b. Change orders
 - c. Application and certificates for payment
 - d. Correspondence letters

In addition to other requirements specified in this Section, The Contractor and his representatives, the Project Manager and his representatives, at every tier required to have a user license(s) shall be responsible for the following:

1. Providing suitable computer systems for each licensed user at the user's normal work location with high-speed Internet access, i.e. DSL, local cable company's Internet connection, or T1 connection.
2. Each of the above referenced computer systems shall have the following minimum system and software requirements:
 - a. Desktop configuration (laptop configurations are similar and should be equal to or exceed desktop system.)
 - i. PC system 500 MHz Intel Pentium III or equivalent AMD processor
 - ii. 128 MB Ram
 - iii. Display capable of SVGA (1024 x 768 pixels) 246 colors display
 - iv. 101 key keyboard
 - b. Mouse or another pointing device
 - c. Operating system and software shall be properly licensed.
 - i. Internet Explorer or other browser (current version is a free distribution for download). This specification is not intended to restrict the host server or client computers provided that industry standard HTTP clients may access the published content.
 - ii. Adobe Acrobat Reader (current version is a free distribution for download).
 - iii. Or, users intending to scan and upload to the documents area of E-Builder® should have Adobe Acrobat (current version must be purchased).
 - iv. Users should have the standard Microsoft Office Suite (current version must be purchased) or the equivalent.

4. CONTROL OF PROCUREMENT

4.1. Contract Plans

The Authority makes no representation or warranty, either express or implied, including any implied warranty of merchantability or fitness for a particular purpose, or any other obligations or liability on the part of the Authority as to the Authority's existing vehicles, sketches, drawings, mock-ups, books, manuals, or prints. The Authority neither assumes nor authorizes any other person to assume for it any other liability in connection with the aforementioned materials. These materials should be used for reference purposes only.

4.2. Contractor's Schedule of Completion

The Contractor shall refer to Section 7 below and Technical Specification Section 2 for detailed delivery requirements and schedule.

4.3. Project Schedule

Upon issuance of the Notice to Proceed (NTP), within five (5) days a representative New Flyer bus (designated as the Pilot bus) shall be made available to the Contractor. Teardown of the Pilot Bus must commence within five (5) days of Pilot Bus arrival at the Contractor's facility.

Two (2) additional "float" buses (3 total including Pilot) shall be made available within 10 days of NTP, for Pilot Bus Structural Inspection Plan and completion of the Structural Teardown Report. Seven (7) additional buses shall be made available within four (4) weeks of NTP. At no time shall more than ten (10) total vehicles be out of revenue service as part of this program, including any vehicle undergoing incoming inspection, acceptance testing, and commissioning. Upon return to the Authority of an overhauled vehicle, the Contractor shall be entitled to receive one (1) additional vehicle.

In line with Technical Specification Section 2, the Authority will conduct a four-phase (kick-off; initial intermediate, and final design review) process:

Project kick-off meeting – to be held within two (2) weeks of NTP (at MBTA facility)

Initial design review (and structural teardown inspection) meeting - to be held within eight (8) weeks of NTP (at Contractor's facility)

Intermediate design review meeting - to be held within 12 weeks of NTP (at Contractor's facility)

Final design review - to be held within 16 weeks of NTP (location to be determined by MBTA)

Upon successful completion of the design review process, as described in Technical Specification Section 2. The Authority will conduct a Pilot Bus First Article Inspection to verify the final design and develop the baseline design configuration for remaining serial production buses.

The Pilot Bus First Article Inspection shall be conducted at the Contractor's facility within 20 weeks of NTP. The Contractor is responsible for correcting all non-compliance items, identified by the Authority at the Pilot Bus First Article Inspection, prior to the Pilot Bus release for shipment. The Pilot Bus shall be delivered to the Authority no later than 22 weeks from NTP. Upon receipt of the bus in Boston, the Pilot bus will undergo a one (1)-week review period by various MBTA stakeholders. Feedback from the review will be provided to the Contractor and

modifications (if any) may be required to be cut-in the baseline design configuration during production.

Serial deliveries shall commence no later than 23 weeks from NTP. The last bus (60th) shall be delivered within 43 weeks of NTP (based on an average delivery rate of one (1.5) buses every week).

The Project Schedule must be submitted to the Authority at the Kickoff Meeting and updates shall be provided on a monthly basis thereafter. **[CDR #1]**

The Production Schedule must be submitted to the Authority at the Kick-off Meeting and updates shall be provided on a monthly basis thereafter. **[CDR #2]**

4.4. Delivery

The Contractor bears full responsibility for all related costs for the transport of the Vehicles, software and tools, and all related equipment, as specified, and Options, if executed, to the Authority's F.O.B. destination.

Vehicles shall be delivered in accordance with the delivery schedule upon certification by the Authority's Resident Inspector that all static testing specified in Specification VE20-051 have been completed.

Overhauled buses shall be delivered at an average rate of 1.5 buses per week, Monday through Friday excluding Saturday, Sunday, and Holidays. Delivery of buses shall be completed in accordance with the following schedule:

1. Pilot Bus (No. 1): Delivery of the Pilot Bus must be completed no later than 22 weeks from Notice to Proceed.
2. Serial Production Buses Nos. 2 – 60: Must commence delivery no later than 23 weeks from Notice to Proceed. The Contractor shall deliver Serial Production Buses at a rate at an average of 1.5 per buses per week.

Failure to comply with the above, subject the Contractor to Liquidated Damages as defined in Section 7.4.

The point of delivery shall be the MBTA Charlestown Bus Maintenance Facility, 21 Arlington Avenue, Charlestown, MA. 02129 or other location(s) on the Authority's property as determined by the MBTA Technical Project Manager. All final inspection, testing (including DPU), correction of defects, modifications, and required retrofits shall be performed at this facility.

4.5. Incoming Inspection (Post-Delivery) Test

The Authority shall conduct Incoming Inspection and acceptance tests on each delivered coach including all testing required by the Authority's safety oversight agency. The purpose of these tests is to identify Defects that have become apparent between the time of coach release and delivery to the Authority. The Incoming Inspection and tests shall include visual inspection and coach operations.

Visual Inspection: The post-delivery inspection is similar to the inspection at the Contractor's plant and shall be conducted with the coach in a static condition. Any visual delivery damage shall be identified and recorded during the visual inspection of each coach.

Coach Operation: Road tests will be used for total coach operation similar to those conducted at the Contractor's plant. In addition, the Authority may elect to perform chassis dynamometer tests. Operational deficiencies of each coach shall be identified and recorded.

All Incoming Inspections and acceptance testing will be performed at the MBTA Charlestown Bus Maintenance Facility, 21 Arlington Avenue, Charlestown, MA. 02129 or other location(s) on the Authority's property as determined by the MBTA Technical Project Manager as defined in Technical Specification Section 2.11.5.

Within seven (7) calendar days after arrival at the designated point of delivery, the bus shall undergo the Authority Incoming Inspection and post-delivery tests as defined in Technical Specification No. VE20-051. If the bus passes these tests, acceptance of the bus by the Authority occurs on the fifteenth (15th) day after delivery. Acceptance may occur earlier if the Authority notifies the contractor of early acceptance or places the bus into revenue service. If the bus fails these tests, it shall not be accepted until the repair procedures have been carried out and the coach retested until it passes. Buses must pass Massachusetts Motor Vehicles Codes of Inspection and Massachusetts Department of Telecommunications and Energy requirements.

4.6. Acceptance of Bus(es)

Within seven (7) calendar days after arrival at the designated point of delivery, the bus shall undergo the Authority Incoming Inspection and post-delivery tests as defined in the Technical Specification VE20-051. If the bus passes these tests, acceptance of the bus by the Authority occurs on the fifteenth (15th) day after delivery. Acceptance may occur earlier if the Authority notifies the contractor of early acceptance or places the bus into revenue service. If the bus fails these tests, it shall not be accepted until the repair procedures defined in Section 4.8 have been carried out and the coach retested until it passes. Buses must pass Massachusetts Motor Vehicles Codes of Inspection and Massachusetts Department of Public Utilities inspections.

NOTE: The Authority reserves the right to accept a vehicle for service pending correction of infancy failures, parts replacements and/or but not limited to, fleet defects.

- A. All Vehicles, including the Pilot Vehicle, shall successfully complete all testing as specified in the Technical Specifications VE20-051. All costs related to acceptance testing will be the responsibility of the Contractor.
- B. If, during Incoming Inspection, the Authority determines that a Vehicle is suitable for operation in revenue service, but that it is not totally responsive to the Specification requirements such that substantial delay might be incurred in implementing required corrective action, the Authority may, at its discretion, issue a "Certificate of Acceptance" for the Vehicle for mutual execution by the Authority and the Contractor. Such accepted Vehicles shall then be available to the Authority for use in revenue service until such time as the Contractor is able to initiate and execute the necessary corrective action.
 1. Such Acceptance shall not negate the Contractor's eligibility for achieving a milestone payment in accordance with the Schedule of Partial Payments (Section 7.3)
 2. Warranty commences to run upon Acceptance into revenue service in accordance with Section 9 except for those parts requiring corrective action.
 3. In addition to the foregoing costs, retrofit or modification work performed by the Authority shall be charged to the Contractor at the Authority's prevailing labor rates (including overhead) in effect at that time.

- C. Should the Authority experience delays in its Vehicle acceptance program attributable to the Contractor because of defective materials, workmanship or design, no more than two unaccepted Vehicles will be permitted on the Authority's property.

4.7. Repairs After Non-Acceptance

REPAIRS BY CONTRACTOR

If the Authority requires the Contractor to perform repairs after non-acceptance of the coach, the contractor's representative must begin work within five (5) working days after receiving notification from the Authority of failure of acceptance tests. The Authority shall make the bus available to complete repairs timely with the Contractor's repair schedule.

The Contractor shall provide at its own expense all spare parts, tools, and space required to complete repairs. At the Authority's option, the Contractor may be required to remove the coach from the Authority' property while repairs are being effected. If the coach is removed from the Authority' property, repair procedures must be diligently pursued by the Contractor's representative, and the Contractor shall assume risk of loss and insure the vehicle for 100% of its Contract value while the coach is under its control. All costs incurred by the removal of the Authority' coaches to and from the Contractor's repair facility are to be borne by the Contractor and reimbursable under warranty if the Authority's personnel are utilized to shift the coaches.

The Contractor shall reimburse the Authority for the Authority's repairpersons/mechanics providing side by side assistance and/or oversite of all repairs performed on Authority property. The amount shall be determined by multiplying the number of man-hours reasonably required to provide side by side assistance by the workers straight wages plus benefits. MBTA's full burdened rate for a repairperson/mechanic of \$79.22 per hour (FY2021). This rate is subject to escalation based upon approved labor contracts during the term of this contract. These wages and fringe benefit rates shall not exceed the rates in effect in the Authority's bus maintenance facilities at the time the defect correction is made.

REPAIRS BY AUTHORITY

Parts Used: If the Authority decides to perform the repairs after non-acceptance of the bus, it shall correct or repair the defect and any related defects using Contractor specified parts available from its own stock or those supplied by the Contractor specifically for this repair. Monthly, or at a period to be mutually agreed upon, reports of all repairs covered by this procedure shall be submitted by the Authority to the Contractor for reimbursement of replacement of parts. The Contractor shall provide forms for these reports.

Contractor Supplied Parts: If the Contractor supplies parts for repairs being performed by the Authority after nonacceptance of the bus, these parts shall be shipped prepaid to the Authority from any source selected by the Contractor within ten (10) working days after receipt of the request for said parts.

Return of Defective components: The Contractor may request that parts covered by this provision be returned to the manufacturing plant. The total cost for this action shall be paid by the Contractor.

Reimbursement for Labor: The Authority shall be reimbursed by the Contractor for labor. The amount shall be determined by multiplying the number of man-hours reasonably required to correct the defect by the workers straight wages plus benefits, plus the cost of towing in the bus if action was necessary. MBTA's full burdened rate for a repairperson/mechanic of \$79.22 per hour (FY2021). This rate is subject to escalation based upon approved labor contracts during the term of this contract. These wages and fringe benefit rates shall not exceed the rates in effect in the Authority's service garage at the time the defect correction is made.

Reimbursement for Parts: The Authority shall be reimbursed by the Contractor for defective parts that must be replaced to correct the defect. The reimbursement shall include taxes where applicable, and fifteen percent (15%) handling costs.

4.8. Final Acceptance of Vehicles

- A. When all corrective actions and retrofits, if any, have been fully completed, and the Vehicle is considered by the Authority to be in full compliance with the contract, the Certificate of Final Acceptance will be executed by the Contractor and the Authority.
- B. Acceptance by the Authority will be made in writing.

4.9. Contractor's Drawings

- A. Drawing submittals shall be in accordance with the requirements outlined in the Technical Specifications VE20-051.
- B. The Contractor shall maintain, and update as required, a log listing all drawings by number and title and showing dates of preparation, submission, and preliminary and final acceptance, and shall submit revised copies of same to the MBTA Technical Project Manager at periodic intervals as established by the Authority.
- C. The Contractor shall submit to the MBTA Technical Project Manager, in accordance with the Technical Specification, Section 2.9, design and engineering drawings for all proposed 'approved equals', and new and improved items.
- D. Individual drawings for each part designed and or manufactured by or for the Contractor shall be prepared. The Authority will respect proprietary data within legal constraints and consistent with the Contract and applicable laws. Assembly, sub-assembly and arrangement drawings shall include a complete Bill of Material and Parts List on the field of the drawing describing all items, including the Subcontractor's parts, and all equipment and specialty details which form part of the assembly.
- E. All the drawings supplied by the Contractor in accordance with this Specification shall be so delineated that the wiring, piping, or mechanical interface between components shall be readily and clearly identifiable.
- F. The Contractor shall submit all design layouts, assembly, and subassembly drawings of safety related features for review by the Contractor's Safety Engineer prior to its release for production to assure the safety of crew and maintenance personnel.

4.10. Contractor Furnished Materials

The Contractor's attention is directed to Specifications for details regarding the requirements for Operating Instruction Books, Maintenance Instruction Books, Renewal Parts Manuals, Technical Procedures Manuals, and Vehicle History Books.

4.11. Access to Documents

Any and all drawings, shop drawings, plans, specifications, and any and all graphic depictions produced by the Contractor pursuant to this Contract shall be made available to the Authority and can be used to secure the manufacture or replacement of any assembly or component for its use in the maintaining of vehicles without any payment of royalties by the Authority. Confidential Information of the Contractor will be protected to the extent allowable by law.

4.12. Conformity with Plans and Specifications

- A. No willful and substantial deviation for the Contract Document Plans and Specifications shall be made unless authorized in writing by the Authority.
- B. Any change which can affect the cost of, and/or time or schedule for completion of, the Contract shall be addressed by Change Order to the Contract in accordance with Section 6.

4.13. Access to Work and Records

- A. The Authority's authorized representatives shall have access, at any time during the Contractor's normal working hours, to the premises used by the Contractor to any plant or place where materials, work, or any part thereof, are being made, preformed, or stored.
- B. The Authority shall arrange for inspections so as to avoid or minimize delay to the work.
- C. Access, at any time during working hours upon proper notification to the Contractor by the Authority, shall also be granted for inspection of all accounting and project management records and documents of the Contractor and its suppliers, relating to any labor, materials, plant, equipment, overhead and other costs used in the performance of work described in any Change Order.
- D. Access shall be given or obtained both before and after completion of this Contract for the duration of the guarantee period.
- E. The Contractor shall retain, for change orders and claims, all accounting records and supporting documentation evidence required to demonstrate compliance with generally accepted accounting principles and the Federal Acquisition Regulation cost standards. Project management records shall also be retained.
- F. The Contractor shall insert a clause containing all of the provisions of this section, including this paragraph, in all subcontract of at least \$50,000 under this contract, altering the clause only as necessary to identify properly the contracting parties.

4.14. Project Photographs

- A. At the completion of the Pilot vehicle two sets of color digital format photographs, showing at least fifty views, on two secure USB flash drives (Kingston Data Traveler Vault Privacy 3.0 or latest revision secure flash drives) shall be provided to the MBTA Technical Project Manager. The Authority's Resident Inspector will determine the subject matter to be photographed. The electronic copies of the photographs shall become the property of the Authority.
- B. All costs for the Project Photographs shall be included within the Contract price submitted.
- C. The Authority's representative(s) shall have the right to take additional photographs of the work with the Authority's equipment and at the Authority's expense.

4.15. Further Obligations

- A. All correspondence, drawings, data, or other written communications pertaining to this Contract shall be in the English language using the English system of weights and measures. All monies expressed shall be in United States dollars. All conversations between Offerors, the Contractor, and the Authority shall be in English.
- B. Communication in connection with this Contract shall be in writing, and shall be delivered personally; or by email, or by regular, registered or certified mail addressed to the officer(s) or employee(s) of the

Authority and of the Contractor designated to receive such communications. Telephone calls may be used to expedite communications but shall not be official communication unless confirmed in writing.

- C. In order to preclude misunderstanding and delays in the procurement process arising from language difficulties, the Authority requires that representatives of the Contractor who serve as official liaisons to the Authority or its representatives shall be sufficiently fluent and versed in the speech, writing, and understanding of the English language so as to enable a facile and comprehensive language intercourse between the Contractor and the Authority and its representatives. To the extent that it concerns their ability to communicate, the Authority reserves the right of rejection of any representative of the Contractor who is found by the Authority to be so deficient in ability to communicate in English as to be prejudicial to the Authority's best interest.
- D. All measurements shall be in English dimensions; and the dimensions shall be expressed in inches and fractions of an inch for less than one foot; feet, inches, and fractions of an inch for dimensions greater than a foot; or in decimal inches.
- E. Metric dimensions, if applicable, shall be included on drawings shown parenthetically either following or under the English dimensions. Metric dimensions smaller than one (1) meter shall be shown in millimeters and dimensions one (1) meter and larger shall be shown in meters and decimal meters.
- F. As set forth in Section 4.2 above, the Contractor shall submit drawings, as required, and schedules to verify that the Contractor's program timing is in compliance with all the requirements of the Contract Documents.

5. CONTROL OF MATERIALS

5.1. Quality of Supply

- A. The Contractor shall furnish all materials required for the furnishing and delivery of vehicles in accordance with the Contract Documents, and the materials shall meet the requirements of the Specifications for the kind of applications involving its use.
- B. Unless otherwise provided, only quality materials which are generally accepted in the industry and conform to the requirements of these Specifications shall be used in the work.

5.2. Trade Names and Alternatives

- A. For convenience in designation on the Plans or in the Specifications certain articles or materials to be incorporated in the work may be designated under trade names or the names of manufacturers and its catalog information.
- B. Except in these instances where used in a particular project, either completed or in the course of completion, the use of an alternative article or material which the Contractor represents to be of at least equal quality and of the required characteristics for the purpose intended shall be permitted subject to all of the following requirements:
 1. It is not the intent of these Specifications to have the Contractor seek acceptance from the Authority for the various interchangeable items of different manufacture that are normally stocked and used by the Contractor. It is the intent of these Specifications that alternative materials for major items of equipment, herein specified, be acceptable to the Authority.
 2. The burden of proof as to the quality and suitability of alternatives shall be upon the Contractor and the Contractor shall furnish all information necessary as required by the Authority at no additional cost to the Authority.
 3. There shall be no substitution for any accepted materials, component, design, or fabrication unless and until the proposed substitute has received written acceptance of the Authority. The Authority may require the removal of any substitute or unaccepted item which is installed by the Contractor without the written acceptance of the Authority. All financial benefits accruing from the substitute materials, components, design, or fabrication shall be the sole right of the Authority.
 4. Where use of an alternative material involves redesign of or changes to other parts of the work, the cost and the time required to effect such redesign or changes shall be considered in evaluating the suitability of the alternative material. No additional cost will be paid by the Authority as a result of the Contractor's selection in using alternatives.
 5. No test nor action relating to the acceptance of substitute materials shall be made until the request for substitutions is made in writing by the Contractor, accompanied by the complete data as to the quality of the materials proposed. Such request shall be in ample time to permit approval without delaying the work.
 6. Whenever classifications, rating, or other certification by a body, such as UL, NEMA, or AREA, is part of the Specification for any material, Proposals for use of alternative materials shall be accompanied by reports from the listed or equivalent independent testing laboratory indicating compliance with Specification requirements.

7. The Contractor shall reasonably demonstrate that an adequate supply of materials, repair parts, and specialties of its own design and manufacture, as well as materials, repair parts, and the specialty parts of the Subcontractors, will be available promptly as the need by the authority may arise.
- C. It shall be understood that specifying a brand name, components, and/or equipment in this Specification shall not relieve the Contractor from its responsibility to produce the product in accordance with the Contractual requirements.
- D. The Contractor is responsible for notifying the Authority of any inappropriate brand name, component and/or equipment that may be called for in the Specification, and to propose a suitable substitute for consideration.

5.3. Storage of Material and Preparation for Delivery

- A. All material intended for use on these Vehicles shall be marked and stored in the Contractor's plant so as to be readily identified and shall be adequately protected during handling and storage.
- B. Certificate of In-Plant Inspection and Release for Shipment:
 1. Unless specifically excepted by the Contract Documents, and additionally at the sole discretion of the Authority, each Vehicle shipped from the Contractor's plant to the Authority shall be complete, ready-to-run.
 2. Prior to the shipment of each Vehicle, the contractor shall obtain a "Certificate of In-Plant Inspection and Release for Shipment" signed by the Authority's Resident Inspector, or other authorized Authority representative at the Contractor's plant. The "Certificate" shall certify that, in the judgment of the Inspector, the Vehicle is complete and complies with the approved Contractor's drawings and samples, and other agreed upon conditions for shipment. The "Certificate of In-Plant Inspection and Release of Shipment" shall not, however, be construed nor inferred to constitute to any degree Vehicle acceptance by the Authority. The Contractor shall allow one (1) working day for the Authority's Inspector to complete inspection of each vehicle prior to shipment.
 3. In the event that Vehicles are complete and ready for shipment prior to the delivery dates specified in the Contract, the contractor shall so notify the Authority. At the Authority's option, the Vehicles may be shipped.
- C. Preparation for Delivery:
 1. All parts that must be removed to permit shipment and those items not permanently secured to the Vehicle shall be securely boxed to prevent damage and shipped in the locked Vehicle to which they belong.
 2. If shipped by sea, all Vehicles or components thereof shall be enclosed to protect against damage from handling or from exposure to the marine environment.
- D. Delivery:
 1. The Contractor shall complete and deliver all equipment and materials defined in the Contract Documents, to the MBTA location to be designated and confirmed by the Technical Project Manager prior to shipping release. Delivery shall be made per the schedule shown in the Contractor's Proposal and in conformance with Section 4.4.
 2. From the time the Vehicles arrive on the Authority's property until such time as the Vehicles are accepted by the Authority for revenue service, the Contractor will be charged at the prevailing rates of the Authority if any work is performed on behalf of the Contractor.
 3. Should the Authority allow Vehicles to be shipped onto its property with retrofit work to be done, the Vehicles shall not be considered delivered until the Contractor has completed all such work.

The Contractor shall be responsible for all Vehicle related costs incurred during the “shipment”, “receipt” and delivery of the Vehicle.

5.4. Receipt of Contractor Furnished Equipment and Materials

A. Receipt of Vehicles:

1. Each completed Vehicle shall be received on its own wheels at the MBTA’s Charlestown Bus Maintenance Facility. Each Vehicle will then be examined by representatives of the Authority. The Authority will then issue a “Incoming Inspection Report” to the Contractor which will acknowledge receipt of the Vehicle and furnish appropriate notation as to its apparent “As-Received” condition. The “Incoming Inspection Report” will be signed by the Authority’s representative and will attest to the stated condition of the Vehicle.

5.5. Patented Devices, Materials, Processes

- A. In the performance of this Contract the Authority has required the Contractor to furnish certain equipment, components, materials and supplies which may be either items designated by brand name or other items.
- B. For items not designated by brand name, the Contractor warrants that the products furnished shall be delivered free of any rightful claim of a third party for infringement of any United States or foreign patent.
 1. If the Contractor notifies the Authority in writing and if the Authority provides authorization, information, and assistance, the Contractor shall defend, or may settle, at its expense, any suit or proceeding against the Authority so far as based on a claimed infringement which would result in a breach of this warranty.
 2. The Contractor shall pay all damages and costs awarded against the Authority due to breach.
- C. In case any product, or any part thereof, is in such suit held to constitute an infringement and the use for the purpose intended of such product or part is enjoined, the Contractor shall, at its expense and option, either procure for the Authority the right to continue using said product or part, or replace with some non-infringing product or part or modify same so it becomes on-infringing, or remove the product and refund the purchase price, less reasonable depreciation for any period of use and any transportation costs separately paid by the Authority. In the event of removal this should not render the vehicle inoperable.
- D. After termination of the guarantee applying to the last Vehicles delivered, the Authority will assume the right to manufacture, or cause to be manufactured, any assembly or component for its sole use in maintaining Vehicles without incurring any obligation to pay any royalties or fees in relation to a letter of patent or copyrights. Except for patented devices, the Contractor shall not have exclusive proprietary rights pertaining to the design of the vehicles.
- E. The Contractor shall grant to the MBTA, its authorized successors and assignees, a perpetual fully paid, royalty free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, the End Product for MBTA’s purposes of operating, maintaining, and repairing Vehicles.

5.6. Warranties, Guarantees, Instruction Sheets and Parts List

Manufacturer’s warranties, guarantees, instruction sheets, and parts list, which the Authority’s Technical Project Manager requires to be furnished, shall be delivered to the Technical Project Manager before conditional acceptance of the Pilot Vehicle.

6. CHANGE ORDERS

6.1. Proposed Changes in Work Scope (Change Orders)

- A. MBTA may, at any time, direct and implement changes in work scope within the general scope of this Contract by issuing a written Change Order.
- B. The Contractor must promptly make such additions, deletions, or changes in the work when and as ordered in writing by MBTA.
- C. The Contractor may, at any time, submit to MBTA in writing, for review and acceptance or denial, proposed modifications to the Contract Documents which will benefit MBTA.
 - 1. MBTA will review and may accept such modifications. Upon acceptance by MBTA of the proposed changes, MBTA will execute and issue a Change Order.
 - 2. Denial of a proposed modification will neither provide the Contractor with any basis for claim for damages nor release the Contractor from contractual responsibilities.
- D. Unless specifically noted in the Change Order, a change in work will not extend the time of completion of the Contract, change the Contract Price, nor amend the terms and conditions of the Contract Documents.
- E. Where changes require the cooperation of one or more Manufacturers or Suppliers, the Contractor is responsible for such changes and must inform the Manufacturers and Suppliers accordingly, and the changes must be incorporated in all Vehicles unless otherwise agreed to by MBTA.
- F. MBTA's apparent waiver of, or failure to enforce, the provisions within Section 6 for any change in scope of work is not a waiver of requirements of this Section for any other change.

6.2. Costs for Work Scope Changes

- A. Upon receipt of an issued Change Order, the Contractor must, within ten (10) working days, give written notice to MBTA with preliminary determination of how the proposed changes will impact the Project Schedule or Contract Price.
- B. Within 30 days of receiving the Change Order, the Contractor must submit a written Notice to MBTA containing the following information:
 - 1. Description of change and details of work to be done.
 - 2. A statement and justification for any additional time required for the completion of the Contract by reason of the Change Order. The statement of additional time must include a detailed schedule analysis identifying which schedule activities and key milestones are impacted.
 - 3. Comprehensive detail on pricing and costing for Change Order, as per the following:
 - a. Prices must comply with the standards of the Federal Acquisition Regulation (FAR) Part 31 and be based on generally accepted cost standards as established under the (FAR), to include material, labor, overhead and profit.
 - b. The cost detail should be comprehensive and readily traceable into the Contractor's accounting records and underline supporting documentation.
 - c. The Contractor's profit must be disclosed separately, so that a judgment can be made relative to the reasonableness given the technical level of work and the associated risk.
 - i. Profit will be allowed up to a maximum of 10% of the direct cost elements for labor, fringe benefits, and overhead; and up to a maximum of 5% for direct cost elements of material, equipment and other.

- d. Prices shall be quoted in United States of America dollars (no cents) on a per vehicle basis.
- e. The comprehensive detail shall include specific information for each type of cost.
 - i. The analysis for labor shall disclose hours by phase/function and total for each employee category. Total hours for each employee category shall be multiplied by the appropriate actual pay rate to compute total labor cost.
 - ii. Materials must be analyzed by type with full description, number of units, unit cost, hours used, hourly cost rate, and total costs.
 - iii. Equipment must be analyzed by type with full description, hours used, hourly cost rate, and total costs.
 - iv. Fringe benefits and overhead rates must be supported by comprehensive computations. Fringe benefit costs must be supported by union agreement rates or company policy. Overhead costs must be supported by audited financial statements.
- f. Estimated costs shall be approved subject to auditing actual costs at the completion of performing change order services.
- C. Whenever the estimated cost of a change or series of related changes exceeds \$100,000, the Contractor, for each change or series of related changes, shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) of work, both changed and not changed, allocable to the change.

6.3. Change Order or Amendment Authorization

- A. A Change Order or Amendment must receive the written acceptance of the Contracting Officer if it involves:
 - 1. A change to the project timeline or Project Schedule;
 - 2. A change to the Contract Price; or
 - 3. A substantial technique change, including any departure from the Technical Specification or any change to accepted material, design, or equipment.
- B. The Contractor must not proceed with any work out of the scope of the Contract until MBTA gives written authorization.
- C. MBTA will not accept any responsibility for work or services performed without proper authorization.

6.4. Executed Change Orders and Amendments

- A. All Change Orders and Amendments must be executed in accordance with the terms and conditions of the Contract Documents and the Authority's Policies and Procedures.
- B. All executed Change Orders and Amendments will become part of the Contract and will constitute the entire agreement between the Authority and the Contractor with regard to any and all costs and time extensions related to Change Order and Amendment work.
- C. All terms and conditions of the Contract Documents, including the Specifications, remain as previously stated unless so noted in the text of an executed Change Order or Amendment.
- D. The Contractor must issue invoice for executed Change Order(s) or Amendment(s) on a per vehicle basis at the milestone corresponding to the Conditional Acceptance of said Vehicle or at the Conditional Acceptance of the incorporation of the defined work scope, whichever occurs last. Payment will be made in accordance with Section 7.1.

6.5. Change Status Report

The Contractor shall maintain a record of all Engineering and contractual Change Orders that have been submitted and/or accepted by the Authority.

- A. Changes must be logged and listed on a Change Status Report that identifies the action taken on each change. The Change Status Report shall be updated at least monthly and copies submitted to the Chief Procurement Officer, the Project Manager/Engineer, and the Consultant.
- B. A separate report shall be prepared and updated quarterly showing the original and revised Contract cost per vehicle delineating all additions on a per item and per Change Order basis, with the format of the report to be approved by the Chief Procurement Officer.

7. PAYMENTS

7.1. Basis for Payment

Basis for payment shall be as follows:

In the event the Contractor has subcontracted any of the work, prior to final payment, the Contractor shall furnish valid Waiver and Release of Lien documents in a form acceptable to the Authority for the work performed or the equipment or material furnished by each Subcontractor.

The acceptance by the Contractor for the final payment shall operate as and shall be a release of the Authority and every member, agent, and employee thereof, from all claim and liability to the Contractor for anything done, furnished for, or relating to the work, or for any act or neglect of the Authority or any person relating to or affecting the work.

Note: The payment of the final Milestone under Section 7.2 will not be processed until all open issues have been resolved.

Payment for the vehicles will be made by ACH, check, or wire transfer within thirty (30) days after receipt of properly prepared Contractor's invoice and upon completion of the milestone corresponding to the payment due.

The Authority shall make all payments to the Contractor in United States Dollars. Milestone Payments will be made with the approval of the MBTA Project Manager for this project.

Milestone payments shall be achieved and become eligible for payment only in the sequential order listed in Section 7.2.

Milestone payments will be made based upon a percentage of work completed. The Contractor shall certify at the completion of each milestone the amount of cumulative actual cost incurred by the Contractor. The Contractor shall separately itemize all payments made and cumulative cost incurred by its subcontractors performing work under this Contract with each milestone certification.

The Contractor will adjust the overall price and corresponding milestone invoices to reflect any executed change orders.

If a vehicle does not meet all of the requirements set forth in the Technical Specifications, the Authority may, at its exclusive option, "Conditionally Accept" the vehicle and place it in revenue service pending receipt of Contractor furnished materials and/or labor necessary to effectuate corrective action.

In no event shall the amount of invoices to the Authority at the time of each milestone exceed 100% of the cost incurred by the Contractor to that date. If an audit should disclose any invoices that exceed 100% of the costs, this excess shall be returned to the Authority and shall be remitted to the Contractor at such time as those costs are incurred.

In order for payments to be issued, the Contractor must have submitted all required progress reports, schedules, tracking documents, and other periodic deliverables, as stated herein or in Technical Specification No. VE20-051, within the 30-day period before invoice submittal.

Failure by the Contractor to maintain an effective project team and/or to manage the project progress shall be considered cause for withholding milestone payments.

Prompt Payment Mechanism. *The Contractor agrees to pay each subcontractor under this Contract for satisfactory performance of work completed no later than ten (10) business days from the receipt of each payment the Contractor receives from the MBTA. The Contractor agrees further to return any retainage withheld within thirty (30) days after the subcontractor's work is fully and satisfactorily completed. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written approval of the MBTA. Failure by the Contractor to comply with these requirements is a material breach of this Contract, which may result in the termination of this Contract or other such remedy as the MBTA deems appropriate.*

7.2. Schedule of Partial Payments

The Contractor is required to submit a Proposal Price based on the following Payment Schedule for Overhauled Buses:

Milestone	Incremental Payment %	Total Payment %	Milestone Description
A	5%	5%	Up to 5% for completion/approval of a Pilot Bus/"Float" Bus Structural Teardown Report and Inspection Plan
B	5%	10%	Up to 5% for completion/approval of all Design Review Submittals
C	10%	20%	Up to 10% for Authority approval of the "Baseline Design Configuration" and the Conditional Acceptance of the Pilot Bus
D	3.81%	92.39%	Conditional Acceptance of Production Buses 2 through 58 (invoiced in nineteen groups of three)
E	2.61%	95%	Conditional Acceptance of Production Buses 59 and 60 (invoiced together)
F	2.5%	97.5%	Resolution of all open Technical, Commercial, and Administrative issues with the exception of Warranty
G	2.5%	100%	Warranty, to be paid in two equal installments of 1.25% as noted: <ul style="list-style-type: none"> • G-1: 1.25% paid 6 months following the acceptance of the last bus • G-2: 1.25% paid 12 months following the acceptance of the last bus

Notes:

- (1) The above "Incremental Payment %" shall be based upon the Base Proposal Price plus any Optional Work Scope, excluding Option 6, that is exercised by the Authority (Section 1.2), as extended for 60 buses.
- (2) If awarded, Option 6 Overhaul of 156 Buses would follow a similar and adjusted incremental payment percentage.
- (3) Upon delivery of each bus, the contractor shall submit a separate detailed payment invoice listing (with appropriate documentation attached) of all approved additional costs incurred on each bus for "Hidden Damage". Hidden Damage invoices shall be processed separately from Milestone invoices.
- (4) The Authority reserves the right to withhold individual milestone payments or some portion thereof in the event that the Authority incurs extra costs not associated with liquidated damages and such costs are directly attributable to the Contractor's performance or lack thereof. Total extra costs for related labor, materials, equipment, and/or consultants will be withheld.

7.3. Liquidated Damages

Meeting the schedule is important to the Authority as much as the quality of the work and the price. It is agreed that this Section shall be construed and treated by the parties to the Contract not as imposing a penalty upon the Contractor for failing fully to complete the work as agreed in the proposal nor as it may have been intended, but as liquidated damages to compensate the Authority for all costs incurred by the Authority because of the failure of the Contractor to fully complete the certain provisions of the Contract as adjusted.

Contract Delivery Requirement Factor – Liquidated Damages shall be assessed for failure to meet the delivery schedule for each bus as noted in Section 4.4 Delivery.

The amount of agreed liquidated damages to be deducted per week day from the Contract price for failure to complete delivery of the Vehicles as specified herein shall be five hundred dollars (\$500) per day per Vehicle. These liquidated damages shall be applied to each Vehicle for each and every weekday it is delayed beyond the delivery time schedule as specified in Section 4.4 of the Contract Documents.

When delay occurs due to reasonable causes beyond the control of the Contractor, including but not limited to, acts of God, acts of government or any governmental agency, war or war conditions, riot or civic conditions, sabotage, strikes, lockouts, accidents, fire, flood, typhoons, hurricanes, explosions, damage to plant, equipment, or facilities, the time for performance and completion of the work shall be adjusted and extended as required to accommodate the delay and its effect.

Permitting the Contractor to continue to deliver Vehicles after the time fixed for its completion, or after the date to which time for delivery may have been extended, shall in no way operate as a waiver on the part of the Authority of any of its rights under the Contract.

Technical Assistance - Liquidated damages shall also be claimed during the guarantee period in the event the Contractor fails to make available to the Authority qualified personnel to provide technical assistance to correct defects in either its equipment or the equipment furnished by the Subcontractors. Whenever the Authority discovers a defect that is of such a nature as to require that a Vehicle be withheld from revenue service, the Technical Project Manager or designee will verbally advise the Contractor of the problem, and the Contractor will be granted no more than seventy-two (72) hours to make available to the Authority such quantity of competent personnel as may be reasonably needed to initiate effective corrective action. If the Contractor fails to provide the technical assistance within seventy-two (72) hours, the Authority shall assess against the Contractor an amount of five hundred dollars (\$500) per day per Vehicle for each and every day the Vehicle is out of revenue service until such time as the Contractor initiates work on such Vehicle during the applicable guarantee period.

Material Availability – Liquidated damages shall also be claimed during the guarantee period in the event the Contractor fails to make available to the Authority an adequate quantity of materials/replacement parts and/or components necessary to correct defects in either its equipment or the equipment furnished by the subcontractors. Whenever the Authority discovers a defect that is of such a nature as to require that a vehicle be withheld from revenue service, the Technical Project Manager or designee will verbally advise the Contractor of the problem, and the Contractor will be granted no more than ten days to make available to the Authority such quantity as may be reasonably needed to initiate effective corrective action. If the Contractor fails to provide the material, parts or componentry within ten days, the Authority shall assess against the Contractor an amount of five hundred dollars (\$500) per day per vehicle for each and every day the vehicle is out of revenue service until such time as the Contractor initiates work on such Vehicle during the applicable guarantee period.

NOTE: In the event a Vehicle is being withheld from revenue service, where either the Contractor fails to provide technical assistance within seventy-two (72) hours or the Contractor fails to provide an adequate quantity of materials/replacement parts and/or components within ten (10) days, liquidated damages shall be assessed.

Accrued Liquidated Damages - There shall be deducted from any money due or to become due to the Contractor at the time of final payment, a sum representing the accrued liquidated damages. Such deductions shall not be considered a penalty, but as the agreed monetary damages sustained by the Authority because the Contractor was unable to provide Vehicles which fully met the service standards required. Should the money due to the Contractor be insufficient to cover such agreed liquidated damages, then the Contractor forthwith shall pay the remainder to the Authority.

Total Liquidated Damages - The maximum percent for all liquidated damages for all Vehicles shall not be in excess of 5% of the Total Contract Value as adjusted through Change Orders.

7.4. Escalation of Pricing for OPTION 6 (Overhaul of 156 Additional Buses)

Escalation is not applicable to any additional buses overhauled and their respective options through an Option, provided that Option is executed within one (1) year from Notice to Proceed for the Base Contract.

Escalation for additional buses overhauled and their respective options through an Option that is executed greater than one (1) year from Notice to Proceed for the Base Contract shall be determined as follows:

- a. The Unit Price quoted by the Bidder in its Proposal for Option 6 Overhaul of 156 Buses and as contained in any Contract issued pursuant to this Request for Proposal will be the “Option 6 Base Price.”
- b. The Unit Price quoted by the Bidder in its Proposal for Option 1 through 5 Pricing and as contained in any Contract issued pursuant to this Request for Proposal will be identified in the “Option 1 Base Price”; “Option 2 Base Price”, “Option 3 Base Price”, “Option 4 Base Price”, “Option 5 Base Price”.
- c. For the purpose of this Escalation Clause, the “Option 6 Base Price” will be adjusted to reflect any change which will be calculated based on the percentage change in the Producer Price Indexes, Bureau of Labor Statistics Department of Labor: Truck and Bus Bodies (Code 1413).

Latest Published Preliminary Index Number Prior to Notice of Exercise of Options
Index Number on Effective Date of the Contract

- d. The Index shall be the Producer Price Index for Truck and Bus Bodies, Series No. 1413, published by the United States Department of Labor, Bureau of Labor Statistics, or if such Index is no longer in use, then such replacement that is most comparable to the Index as may be designated by the Bureau of Labor Statistics, or as agreed by the parties.
- e. Escalation – General:

The provisions of Section 7.4 shall be for the sole exclusive measure of adjustments in compensation for inflation or deflation, without regard to actual changes in the cost of labor or materials, or use thereof, during the performance of this Contract.

8. TECHNICAL SPECIFICATION

Technical Specification VE20-051 is posted with this RFP No. 142F-20 on COMMBUYS **BD-21-1206-40000-40000-56470**.

9. WARRANTY

9.1. Guarantee of End Products (Warranty)

The Contractor shall guarantee the described work under the Technical Specification, VE20-051, and other Authority approved work on the buses as follows:

- a. The complete bus (bumper-to-bumper) will be free from defects and related defects for one year or 50,000 miles, whichever comes first, beginning on the date of revenue service but not longer than 15 days after acceptance by the Authority.
- b. The warranty is based on regular operation of the bus under the operating conditions prevailing in the Authority's locale.
- c. Upon delivery to the Authority, all buses must pass the Massachusetts Motor Vehicle Code of Inspection and Massachusetts Department of Public Utilities (DPU) requirements as an express condition of final acceptance by the Authority.
- d. Additional warranty coverage shall apply to subsystems and components as identified in Section 9.2.
- e. If a bus is removed from revenue service for more than 30 days for warranty/repair/retrofit work, the duration of the time the bus is removed from service will extend the warranty period accordingly.
- f. All retrofits for the remainder of the guarantee period or for one (1) year from the date of retrofit completion per bus, whichever period is greater.

All warranties shall not be prorated with the exception of extended or superior warranties that are passed on to the Authority. The Contractor shall pass on to the Authority any warranty, offered by a component supplier, that is superior to that required herein.

The Contractor shall guarantee the buses shall be in accordance with the Contract Documents when the buses are accepted and shall guarantee against defect due to faulty design, poor workmanship, or poor material during the foregoing respective periods of guarantee. If any part or parts thereof, prove defective either in design, materials, or workmanship during the respective periods of guarantee, the Authority shall promptly notify the Contractor, and the Contractor shall repair or replace, as mutually agreed by both parties, such part or parts without expense to the Authority.

Any repair or retrofit work required to fulfill these guarantees shall be accomplished with minimum disruption to the Authority's operation and its maintenance facility; however, as a condition precedent to the Contractor's liability under the Guarantee and Warranty of End Product, the Contractor shall have been given notice of the defect(s),

reasonable access to the defective part(s), and the defective part(s) shall not have been changed or altered without the Contractor's knowledge, whether by additions, subtractions or otherwise, in any manner whatsoever.

Due to the regular maintenance demands on Authority facilities and on the Authority's operation personnel, it may be possible to undertake only minimal adjustment, repair, or replacement work on equipment prior to Final Acceptance. The Contractor shall, in such an event, be responsible for securing facilities and personnel to facilitate all additional work required for the duration of the Contract.

9.2. Additional and/or Extended Warranty Coverage

The Contractor shall provide extended warranty coverage as described below.

- a. The remanufactured Cummins diesel engine shall be provided with a minimum 3-year (unlimited miles) parts and labor warranty. The warranty shall provide for service from MBTA's local Cummins Factory Authorized dealers.
- b. Other propulsion system components, specifically the hybrid drive unit and major subcomponents, energy storage system, and drive and non-drive axles, which are overhauled or upgraded by the Contractor, shall be warranted to be free from Defects and Related Defects for 2 years or 100,000 miles, whichever comes first.
- c. If Option 2 is awarded, the Contractor shall provide additional Engine (Cummins) Extended Warranty coverage as described below.
 1. The Contractor shall provide an OEM extended warranty on all Cummins ISB 6.7 diesel engines. The Authority requires the extended warranty proposals terms be for a total of five (5) years and 200,000 miles from the acceptance of the vehicle. The warranty shall provide for service from MBTA's local Cummins Factory Authorized dealers.

9.3. Serial Numbers

Upon delivery of each bus, the Contractor shall provide a complete electronic list of serialized units installed on each bus to facilitate warranty tracking. The list shall include, but is not limited to the following:

- a. Engine
- b. Hybrid Drive Unit
- c. Energy Storage System pack(s) or module(s)
- d. All major subcomponents of the hybrid drive system
- e. All heat exchanger units (radiators and coolers)
- f. Alternator
- g. Starter
- h. HVAC system and major components

- i. Drive axle
- j. Steering axle
- k. Power steering unit
- l. Air compressor
- m. Mobility device/wheelchair ramp

The Contractor shall provide updated serial numbers resulting from warranty campaigns. The format of the list shall be approved by the Authority prior to delivery of the first production bus.

9.4. Extension of Warranty

If, during the warranty period, repairs or modifications on any bus, made necessary by defective design, materials or workmanship are not completed due to lack of material or inability to provide the proper repair for 30 calendar days, the applicable warranty period shall be extended by the number of days equal to the delay period. This shall apply to all extended warranties.

9.5. Voiding of Warranty

The warranties shall not apply to the failure of any part or component of the bus that directly results from misuse, negligence, accident, or that has been repaired or altered in any way so as to affect adversely its performance or reliability. The warranty shall also be void if the Authority fails to conduct normal inspections and scheduled preventive maintenance procedures as recommended in the OEM maintenance manuals and that omission caused the part or component failure. The Authority shall maintain documentation, auditable by the Contractor, verifying service activities in conformance with the OEM maintenance manuals.

9.6. Exceptions and Additions to Warranty

The warranty shall not apply to scheduled maintenance items and normal wear-out items such as belts, tires and friction material unless such items require a service interval less than the defined scheduled maintenance interval or require premature replacement. The warranty shall not apply to items furnished by the Authority except insofar as such equipment may be damaged by the failure of a part or component for which the Contractor is responsible.

9.7. Pass-Through Warranty

Should the Contractor elect to not administer warranty claims on certain components and wish to transfer this responsibility to the sub-suppliers, or to others, the Contractor shall request this waiver.

Contractor shall state in writing that the Authority's warranty reimbursements will not be impacted. The Contractor also shall state in writing any exceptions and reimbursement including all costs incurred in transport of buses and/or components. At any time during the warranty period, the Contractor may request approval from the Authority to assign its warranty obligations to others, but only on a case-by-case basis approved in writing by the Authority.

Otherwise, the Contractor shall be solely responsible for the administration of the warranty as specified. Warranty administration by others does not eliminate the warranty liability and responsibility of the Contractor.

9.8. Superior Warranty

The Contractor shall pass on to the Authority any warranty offered by a component Supplier that is superior to that required herein. The Contractor shall provide a list to the Authority noting the conditions and limitations of the Superior Warranty not later than the start of production. The Superior Warranty shall not be administered by the Contractor.

9.9. Fleet Defects

A fleet defect is defined as cumulative failures of any kind in the same components in the same or similar application where such items covered by the warranty and such failures occur in the warranty period in the specified proportion of the buses delivered under this contract. The proportion shall be fifteen (15) percent. When a Fleet Defect is declared, the remaining warranty on that item / component stops. The warranty period does not restart until the Fleet Defect is corrected.

For the purpose of Fleet Defects, each option order shall be treated as a separate bus fleet. In addition, should there be a change in a major component within either the base order or an option order, the buses containing the new major component shall become a separate bus fleet for the purposes of Fleet Defects.

The Contractor shall be responsible for all costs of labor and material, for defect identification and location, and for removal, repair or replacement of defective parts, and for alterations, repairs, tests, and adjustments in connection therewith made to obtain bus performance identified in the Technical Specification. All such replaced or repaired items shall be guaranteed for the remainder of the warranty period or for one (1) year, whichever period is greater.

The Contractor shall correct a fleet defect under the warranty provisions defined in "Repair Procedures". After correcting the Defect, the Authority and the Contractor shall mutually agree to and the Contractor shall promptly undertake and complete a work program reasonably designed to prevent the occurrence of the same Defect in all other buses and spare parts purchased under this contract. Where the specific Defect can be solely attributed to particular identifiable part(s), the work program shall include redesign and/or replacement of the defectively designed and/or manufactured part(s) in the entire fleet. In all other cases, the work program shall include inspection and/or correction of all of buses in the fleet via a mutually agreed to arrangement. The Contractor shall update, as necessary, technical support information (parts, service and operator's manuals) due to changes resulting from warranty repairs. The Authority may immediately declare a Defect in design resulting in a safety hazard to be a Fleet Defect. The Contractor shall be responsible to furnish, install and replace all defective units.

9.10. Repair Procedures

The Contractor is responsible for all warranty-covered repair work. To the extent practicable, the Authority will allow the Contractor or its designated representative to perform such work. *At its discretion, the Authority may perform such work if the Authority determines it needs to do so based on transit service or other requirements. Such work shall be reimbursed by the Contractor.*

If the Authority detects a defect within the warranty periods, it shall within 20 working days, notify the Contractor's representative. Within 5 calendar days after receipt of notification, the Contractor's representative shall either agree that the Defect is in fact covered by warranty, or reserve judgment until the subsystem or component is inspected by the Contractor's representative or is removed and examined at the Authority' property or at the Contractor's plant. At that time, the status of warranty coverage on the subsystem or component shall be mutually resolved between the Authority and the Contractor. Work shall commence to correct the Defect within 5 working days after receipt of notification and shall be conducted in accordance with "Repairs by Contractor".

When warranty repairs are required, the Authority and the Contractor's representative shall agree within 5 working days after notification on the most appropriate course for the repairs and the exact scope of the repairs to be performed under the warranty. If no agreement is obtained within the 5-day period, the Authority reserves the right to commence the repairs in accordance with Section 9.10 (b)(1) through 9.10 (b)(3), *Repairs Performed by the Authority*.

Warranty shall include diagnosis of the issue, removal and replacement of component(s), as well as road calls and towing related to warrantable failures.

a. For all Repairs Performed by the Contractor:

1. The Contractor or its designated representative shall begin work on warranty-covered repairs, within 5 calendar days after receiving notification of a Defect from the Authority. The Authority shall work with the Contractor to make the bus available to complete repairs timely in line with the Contractor's proposed repair schedule.
2. The Contractor shall provide at its own expense all spare parts, tools, and space required to complete repairs. At the Authority's option, the Contractor may be required to remove the bus from the Authority' property while repairs are being performed. If the bus is removed from the Authority' property, repair procedures must be diligently pursued by the Contractor's representative, and the Contractor shall assume risk of loss and insure the bus for 100% of its Contract value while the bus is under its control. All costs incurred by the moving of Authority's buses to and from the Contractor's repair facility are to be borne by the Contractor and reimbursable under warranty if the Authority's personnel are utilized to shift the buses.

b. For all Repairs Performed by the Authority:

1. Parts Used: If the Authority performs the warranty-covered repairs, it shall correct or repair the Defect and any Related Defects utilizing parts supplied by the Contractor specifically for this repair. At its discretion, the Authority may use Contractor-specified parts available from its own stock if deemed in its best interests.
2. Contractor Supplied Parts: The Authority may require that the Contractor supply new parts for warranty-covered repairs being performed by the Authority. These parts shall be shipped prepaid to the Authority from any source selected by the Contractor within 10 working days of receipt of the request for said parts. Parts supplied by the Contractor shall be Original Equipment Supplier (OEM). All parts shall include hardware, bolts, nuts, washers and associated accessories that are normally supplied when replacement parts or kits are purchased.

3. Defective Components Return: The Contractor may request that parts covered by the warranty be returned to the manufacturing plant. The total cost for this action shall be paid by the Contractor. Materials should be returned in accordance with Contractor's instructions.
- c. Failure Analysis: The Contractor shall, upon specific request of the Authority, provide a failure analysis of fleet defect- or safety-related parts, or major components, removed from buses under the terms of the warranty, that could affect fleet operation. Such reports shall be delivered within 60 days of the receipt of failed parts.
- d. Monthly, or at a period to be mutually agreed upon, reports of all repairs covered by this warranty shall be submitted by the Authority to the Contractor for reimbursement or replacement of parts. The Contractor shall provide forms for these reports. The Authority will approve the warranty forms to be utilized on this contract at the initial design review meeting. Efforts shall be made by both the Contractor and the Authority to automate warranty claims processing and record keeping.

9.11. On-site Warranty Coordinator

The Contractor shall provide an on-site Warranty Coordinator to handle and coordinate with the Authority all warranty issues for the duration of the warranty period. The aforementioned Warranty Coordinator must be available for the complete bus warranty (1 year/50,000 miles) period for each bus delivered and accepted by the Authority including any extensions to said period due to required removal from revenue service, fleet defect repairs, and/or retrofit program completion. The Authority reserves the right to give approval of the proposed Warranty Coordinator.

The Authority requires on-site availability of the Contractor's Warranty Coordinator or representative to address technical issues as they arise and for processing warranty claims, both actions to be conducted in a timely, expeditious manner.

9.12. Warranty Reimbursement

It shall be understood that the Contractor shall be responsible for all costs of labor and material for defect identification and location, and for the removal, repair, or replacement of defective parts, and for alterations, repairs, tests, and adjustments in connection therewith, made to obtain specified bus performance. All work performed by Authority personnel on behalf of the Contractor in connection with the execution of this contract shall be billable to the Contractor at the MBTA's full burdened rate for a repairperson/mechanic of \$79.22 per hour (FY2021). This rate is subject to escalation based upon approved labor contracts during the term of this contract. Replaced and/or repaired items shall be guaranteed for the remainder of the guarantee period or for one (1) year, whichever period is the greater.

The Authority will be reimbursed by the Contractor for defective parts or for parts that must be replaced to correct a defect. The reimbursement will be at the current price at the time of repair and include taxes where applicable plus fifteen (15) percent handling costs. Handling costs shall not apply if parts are supplied by the Contractor and shipped to the Authority.

During the respective period of guarantee, all bus parts or material caused to be damaged as the result of a defect in design, material, or workmanship in other bus parts or material, shall be repaired or replaced at the expense of the

Contractor. Failure reports must accompany all repaired parts. At no time will the Authority be required to provide information or justification for warranty reimbursement other than the providing of maintenance records.

Each claim must be submitted no more than thirty (30) days from the date of failure and/or repair, whichever is later. All defective parts must be returned to the Contractor, when requested, no more than forty-five (45) days from the date of repair.

The Contractor shall respond to the warranty claim with an accept / reject decision including necessary failure analysis no later than sixty (60) days after the Authority submits the claim and defective part(s), when requested. Reimbursement for all accepted claims shall occur no later than sixty (60) days from the date of acceptance of a valid claim. The Authority may dispute rejected claims or claims for which the Contractor did not reimburse the full amount. The parties agree to review disputed warranty claims during the following quarter to reach an equitable decision to permit the disputed claim to be resolved and closed. The parties also agree to review all claims at least once per quarter throughout the entire warranty period to ensure that open claims are being tracked and properly dispositioned.

In no case shall any correction of defects in design, material, or workmanship take the form of an increase in maintenance requirement beyond that specified in the Contract Documents, described in the original edition of the maintenance instructions, approved in the Baseline design, or submitted by the Contractor at the time of bid for the Contract.

Reimbursements are to be transmitted to the Authority's Project Manager.

9.13. Warranty After Repair/Replacement

If any component, unit, or subsystem is repaired, rebuilt or replaced by the Contractor, or by the Authority with the concurrence of the Contractor, the component, unit, or subsystem shall have the un-expired warranty period of the original. Repairs shall not be warranted if Contractor-provided or authorized parts are not used for the repair, unless the Contractor has failed to respond within 5 days.

The warranty on items determined to be fleet defects shall be guaranteed for the remainder of the warranty period or for one-year, whichever period is greater. This extended warranty shall begin on the repair/replacement date for corrected items on each bus if the repairs are completed by the Contractor or on the date the Contractor provides all parts to the Authority.

9.14. Warranty Processing Procedures

The following list represents requirements by the Contractor to the Authority for processing warranty claims. One failure per bus per claim is allowed.

- a. bus number and VIN
- b. total bus life mileage at time of repair
- c. date of failure/repair
- d. acceptance / in-service date
- e. Contractor part number and description

- f. component serial number
- g. description of failure
- h. all costs associated with each failure / repair (invoices may be required for third-party costs):
 - 1. towing
 - 2. road calls
 - 3. labor
 - 4. materials
 - 5. parts
 - 6. handling
 - 7. troubleshooting time

9.15. Warranty Forms

The Authority's forms will be accepted by the Contractor if all of the above information is included. Electronic submittal may be used if available between the Contractor and the Authority.

9.16. Return of Parts

When returning defective parts to the Contractor, the Authority shall tag each part with the following:

- a. bus number and VIN
- b. claim number
- c. part number
- d. serial number (if available)

9.17. Warranty Work Tracking

It is the responsibility of the Contractor to track all warranty work conducted by the Contractor, its representatives, or OEM system suppliers. Warranty tracking is to be entered into the Authority's tracking system (MCRS) by the Contractor. All parts replaced and results of diagnostic tests shall be adequately documented in MCRS.

Any work that is performed after the Authority's Resident Inspector has signed for shipment of a bus shall be considered warranty work and shall be documented as such.

10. QUALITY ASSURANCE / QUALITY CONTROL (QA/QC) REQUIREMENTS

To provide a quality product to the Authority, the Contractor shall have an established and documented quality assurance program in compliance with ISO 9001:2015 and FTA 2019 Quality Management System Guidelines.

The Contractor shall apply the principles of FTA 2019 Quality Management System Guidelines and the appropriate ISO 9000:2015 series processes or equivalent and enforce the elements of the quality assurance program within all parts of its organization and with all manufacturers, subcontractors, suppliers, and sub-suppliers performing Contract work.

The Authority shall be notified of all customer witness point inspections and shall be provided with an opportunity to witness these inspections. However, work may proceed beyond said inspection without written authorization from the Authority. The Authority reserves the right to institute at any time additional customer witness point inspections.

The Authority reserves the right to institute at any time customer-witnessed hold-point inspections. If customer-witnessed hold-point inspections are instituted, the Contractor may not proceed beyond said inspection prior to receiving written authorization from the Authority.

The Authority reserves the right to perform random in-process inspections.

10.1. Project Quality Assurance Plan

The Contractor's Quality Assurance Plan shall provide details of each Quality Program Element (Sections 10.2 through 10.17) through each phase (Design Review, Pilot Bus, Final Design and Production) of the overhaul program.

The Contractor shall submit for Authority review and approval its proposed Project Quality Assurance Plan (PQAP) at the Initial Design Review meeting. [CDR #6]

This Plan must also identify the controls, resources, and skills the Contractor will apply to satisfy project quality system requirements. The following sections shall be discussed in the PQAP submitted to the Authority.

- For each specified quality system requirement, the PQAP must identify how it will be satisfied, when, where, and by which job function.
- The Contractor shall define their Quality Program, Quality Control program, Quality Assurance program, Quality Oversight plan, and Quality Audit procedures.
- The Contractor's plan shall also encompass all testing and inspections identified in Section 2 of this Technical specification
- It must include a flow chart of the manufacturing and overhaul sequence with all planned inspections, hold points, and customer witness points indicated. The chart shall indicate entities participating in the inspections.
- Required inspection equipment, measurements, personnel certifications, workmanship acceptance standards, methods of inspection, and quality record documentation shall be identified in the PQAP.
- The PQAP may refer to specific sections of other Contractor documents, such as the Quality Manual and

supporting procedures, if such documents are applicable to this project.

10.2. Management Responsibility

The Contractor shall define and document a quality policy and communicate, implement and maintain that policy at all levels of their organization. The Contractor shall designate a representative who shall have defined authority and responsibility for ensuring that the Quality policy is implemented and maintained. The Contractor shall identify those persons responsible for each quality function and shall define in writing the responsibility, authority and interrelation of those persons.

The Contractor shall provide an organization chart identifying project personnel who have responsibility for ensuring or controlling quality and their interrelationships with the Contractors project management team.

In particular, the organizational chart must identify personnel who have responsibility to initiate action to prevent quality problems, to identify and record quality problems, to initiate solutions through appropriate channels, and to verify implementation of solutions to quality problems.

The Personnel responsible for assuring quality must be independent of those having responsibility for the work being performed and shall report to the Contractor's top management.

10.3. Documented Quality Management System

The Contractor shall define and document a quality policy and communicate, implement and maintain that policy at all levels of their organization. The Contractor shall designate a representative who shall have defined authority and responsibility for ensuring that the Quality policy is implemented and maintained. The Contractor shall identify those persons responsible for each quality function and shall define in writing the responsibility, authority and interrelation of those persons.

10.4. Design Control

The Contractor shall define and document their Design Control procedures. The Contractor shall provide Design Control procedures to be used during the Design Review Process (Technical Specification No. VE20-051 Section 2) and during production. The Contractor's Design Control process shall identify:

- How the Contractor shall ensure the Design Review Process, requirements, verifications, and activities are understood by all of the Contractor's employees, contractors, and subcontractors
- How the Contractor shall maintain conformability to the approved Pilot Bus configuration
- How the Contractor shall document and implement subsequent revisions to the approved configuration
- How the Contractor shall perform and document independent checks to confirm compliance to approved configuration
- The Contractor's staff and responsibilities for all aspects of Design Control

10.5. Document Control

The Contractor shall provide procedures for the control of all project documentation. All reports, plans, programs, procedures, schedules, and other materials prepared for the Contract work to be performed by the Contractor or any Subcontractors must be the property of the Authority. The Authority shall be entitled to copies and access to these

materials during the progress of the Contract. All such reports, plans, programs, procedures, schedules, and other materials must be readily accessible to the Authority.

10.6. Purchasing

The Contractor shall ensure that all material and components procured for this project conform to the technical specifications and approved configuration. The Contractor shall select suppliers which have a documented quality process and can provide materials and components in the required timeframe that meet the quality requirements.

The Contractor shall establish and utilize procedures for control of components/assemblies provided by the Authority, fabricated by the Contractor or Subcontractor, or procured by the Contractor or Subcontractor.

The Contractor and all Subcontractors shall submit for Authority review and approval a Material Procurement and Control Plan defining procedures and processes that will be utilized by the Contractor and all Subcontractors for material procurement and control. At a minimum, the Contractor's plan must identify procedures and processes for the following:

- Configuration Control, to prevent purchase or use of incorrect or obsolete components/assemblies.
- Material Availability, including base stock quantity, lead time, and re-order quantity for each component/assembly.
- Receiving Tests or Inspections, to prevent use of defective material purchased or fabricated by the Contractor or Subcontractor. Acceptance criteria shall be identified for all tests or inspections.
 - Requirements must be provided for additional testing in the event that nonconforming materials are identified.
- Material Identification and Accountability, through all stages of the overhaul process. Individual components/assemblies or lots shall retain unique identification, labeling, and indicate their acceptance, rejection, or uninspected status.
- Provide traceability of all serialized parts
- Control and Disposition of Nonconforming Materials, to prevent inadvertent use or installation of defective components/assemblies.
 - Suppliers of nonconforming material shall be notified of the nonconformance and the Contractor shall work with the Supplier or identify a new Supplier to prevent recurrence of the defect.

10.7. Product Identification and Traceability

The Contractor shall provide documentation of their established system for identifying, controlling, and providing traceability for all inventory, rebuilt components, and cores to prevent the use of nonconforming or defective items. The Contractor shall demonstrate their system will ensure only correct and approved materials and components will be used in the overhaul program. The Contractor's plan shall include:

- Configuration Control, to prevent purchase or use of incorrect or obsolete components/assemblies.
- Receiving Tests or Inspections, to prevent use of defective material purchased or fabricated by the Contractor or Subcontractor. Acceptance criteria shall be identified for all tests or inspections.
 - Requirements must be provided for additional testing in the event nonconforming materials are identified.
- Material Identification and traceability through all stages of the overhaul process. Individual components/assemblies or lots shall retain unique identification, labeling, and indicate their acceptance,

- rejection, or uninspected status.
- Provide traceability of all components removed and installed on the bus as part of the overhaul program.
- Control and disposition of nonconforming materials to prevent inadvertent use or installation of defective components/assemblies.
 - Suppliers of nonconforming material shall be notified of the nonconformance and the Contractor shall work with the Supplier or identify a new Supplier to prevent recurrence of the defect.

10.8. Process Control

A significant part of the Contractor's quality and overhaul program shall be to prevent problems by controlling the applicable overhaul and repair processes, thereby lessening the demands on required inspection and correction activities. To this end, the Contractor shall identify and plan processes necessary to produce, under controlled conditions, products, and services of the specified quality.

The Contractor shall prepare documented work procedures, test procedures, acceptance criteria for all work performed, general instructions and workmanship criteria, and monitor and approve production processes.

Production equipment and processes must be maintained as necessary to ensure that products satisfy specified requirements.

10.9. Inspection and Test Plan

The QAO shall establish, maintain, and periodically audit a fully documented inspection system. The system shall prescribe inspection and test of materials, work in process, and completed articles. The Inspection and test plan shall also include the following controls:

- Inspection Personnel: Sufficient trained inspectors shall be used to ensure that all materials, components, and assemblies are inspected for conformance with the qualified bus design.
- Inspection Records: Acceptance, rework, or rejection identification shall be attached to inspected articles. Articles that have been accepted as a result of approved materials review actions shall be identified. Articles that have been reworked to specified drawing configurations shall not require special identification. Articles rejected as unsuitable or scrap shall be plainly marked and controlled to prevent installation on the Authority's buses. Articles that become obsolete as a result of engineering changes or other actions shall be controlled to prevent unauthorized assembly or installation. Unusable articles shall be isolated and then scrapped.
- Discrepancies noted by the Contractor or Resident Inspectors during assembly shall be entered by the inspection personnel on a record that accompanies the major component, subassembly, assembly, or bus from start of assembly through final inspection. Actions shall be taken to correct discrepancies or deficiencies in the manufacturing processes, procedures, or other conditions that cause articles to be in nonconformity with the requirements of the contract specifications. The inspection personnel shall verify the corrective actions and mark the discrepancy record. If discrepancies cannot be corrected by replacing the nonconforming materials, the Authority shall approve the modification, repair, or method of correction to the extent that the contract specifications are affected.

Inspection and testing are used as a means for the Contractor to demonstrate Specification compliance to the Authority. The Contractor shall submit an Inspection and Test Plan for review and approval by the Authority at the Kick-off meeting. [CDR #5c]

The Inspection and Test Plan must include a comprehensive list of all inspection and testing to be performed before, during, and after bus overhaul, including references to the written inspection and test procedures.

The arrangement and content of Inspection and Test Procedures must be approved by the Authority as part of the Inspection and Test Plan. A sample Receiving Inspection and a sample Conformed Inspection Report shall be provided to the Authority for review and approval as part of the design review process.

The Contractor shall establish and maintain written procedures for inspection and testing activities, including requirements for feature, function, and performance verification/validation. All Inspection and Test procedures must be submitted to the Authority for review and approval.

Procedures must identify all measurement tools and test equipment required to perform the inspection or test. If, during the Buses overhaul, the Authority finds any item which is not in accordance with the Contract Documents, no further or similar non-conforming work shall be done by the Contractor or the Subcontractor.

Acceptance criteria must be identified for all inspections and tests.

Records must be kept of all inspection and testing results before, during, and after overhaul to provide objective evidence that specified product requirements have been met. This includes all in-process inspections and tests, as well as the receiving inspection, pre-shipment inspection, and first article inspection. The arrangement and content of the record forms must be approved by the Authority as part of the Inspection and Test Plan.

The Authority reserves the right to inspect and approve each component and any completed part of the work before similar work is undertaken to comply with the overhaul schedule. Any discrepancies or variations from the Specifications and/or drawings, except those previously approved, which inspection may reveal, shall be corrected prior to proceeding with the additional systems, subsystems or components, or the installation of new systems on the Buses.

10.10. Inspection, Measuring and Test Equipment

The Contractor shall provide documentation of their controls of all inspection measuring and test equipment to be used on the overhaul program. The Contractor's Inspection, Measuring, and Test Equipment plan shall address and document the following:

- Measurement tools and test equipment must be kept in current calibration over the length of the Contract. The Contractor and any Subcontractors shall establish and utilize control and calibration procedures to ensure that only calibrated measurement tools and test equipment are used.
- The method and period of recalibration must be in accordance with a recognized national standard. The Contractor shall provide a documented calibration schedule for all testing, inspection, and measurement equipment to be used for this overhaul contract.
- The Contractor and any Subcontractors shall keep on file a certification of calibration for all

measurement tools and test equipment.

- Calibration status, including calibration due date, must be marked on all measurement tools and test equipment.
- Inspection and test records must include the identification and calibration status of all measurement tools and test equipment used.
- Measurement tools and test equipment must be suitably stored to ensure continued accuracy and fitness for use.
- Control and calibration procedures must contain provisions for determining the validity of previous measurements and tests and taking appropriate corrective action if measurement tools or test equipment are found out of calibration.

10.11. Inspection and Test Status

The Contractor shall identify by suitable means the inspection and test status of all overhaul work performed throughout the overhaul process. The Contractor's process shall provide a tracking procedure to verify all inspections at each stage of production are performed on time with a reporting system for tracking nonconformance. The tracking shall include the inspection status of all work performed and inspections of all components.

10.12. Controlling Nonconforming Products and Services

The Contractor shall establish and maintain a procedure to identify and document nonconforming materials and overhaul work procedures performed. The Contractor shall include a corrective action plan to prevent a reoccurrence of nonconforming work procedures and materials. The corrective action plan shall include a documentation, review, notification, and disposition process and the steps for each.

Nonconforming materials must be segregated from acceptable items. In any case, the Contractor remains solely responsible to prevent unauthorized use of nonconforming material.

The Contractor shall establish and identify Nonconformance Review staff, comprised of qualified individuals, to review all potential and reported nonconforming work and materials, and recommend corrective actions to prevent recurrence of the nonconformance, and verify that corrective actions have been implemented.

10.13. Corrective and Preventative Action

The Contractor shall establish and maintain procedures for taking corrective and preventive action that is appropriate to the size of the problems and commensurate with the risks that they present.

Corrective Action procedures must be effective in handling complaints from nonconformance reports and from all entities, including the MBTA. Methods must include problem analysis, recording results, determining the most effective corrective action, verifying that corrective actions have been taken, and that they are effective.

Preventive Action procedures must require use of all available information to eliminate potential sources of nonconformity. Methods must include data and information analysis, determining the best approaches to preventing nonconformity, implementing and ensuring effectiveness of preventive action plans, and forwarding significant details of actions taken for review by management.

The difference between corrective and preventive action must be clearly expressed in the Contractor's Project Quality Assurance Plan.

Corrective Action procedures must address actual nonconformities that have occurred.

Preventive Action procedures must address the potential for nonconformity to occur in the future.

10.14. Quality Records

The Contractor is required to establish procedures for maintaining quality records. These procedures should identify which records should be kept, responsibility for production and collection, and responsibility for indexing, filing, storage, maintenance, and disposition of quality records.

The Contractor shall maintain all records including those that show achievement of quality objectives and functioning of the quality management system including supplier and subcontractor quality records.

At a minimum, quality records requiring control are Inspection Reports, Test Data, Qualification Records, Nonconformances, Corrective Actions, Audit Reports, Inspections, and Training Documentation.

Records must include actual results of measurements taken and tests conducted.

Inspection and test records must include the identification and calibration status of all measurement tools and test equipment used.

The Contractor must include all Inspection and Test records in the Coach History Books.

10.15. Quality Audits

The Contractor's Quality Audit plan shall be designed to ensure the Contractor's Quality Management System is properly implemented guaranteeing full conformance to the bus overhaul technical specifications and all addendums and revisions. The Contractor's Quality Audit plan shall establish and maintain a quality control audit program and schedule to include an audit of each quality element at least once per year with more frequent audits performed to address deficiencies and document control functions. The Contractor shall identify an independent auditor experienced with bus overhauls to perform the audits. The Contractor shall provide all audit reports and findings to the Authority for review which shall include all observations, major and minor nonconformance, opportunities for improvement, and recommendations.

The Contractor shall present the results of the audits to the personnel having responsibility in the area being audited with corrective actions addressed and documented.

10.16. Training

The Contractor shall establish and maintain procedures for qualifying all personnel for the overhaul tasks to be performed, identifying license, certification requirements and training needs, providing the appropriate training, maintaining records of all training and certifications (including expirations and renewals), for all personnel

performing or supervising overhaul activities. The Contractor shall work with vendors and OEM's to obtain appropriate training and certifications.

10.17. Use of Statistical Techniques

Statistical quality control applications used in acceptance of parts, materials, or processes by the Contractor or its suppliers must be fully documented and based on generally recognized and accepted statistical quality control methods and defined in the Contractors Project Quality Assurance Plan.

11. CONTRACT TERMS AND CONDITIONS

Upon execution by the Contractor, these Terms and Conditions will be incorporated by reference into any Contract executed by the Contractor and the Massachusetts Bay Transportation Authority (MBTA), in the absence of a superseding law or regulation requiring a different Contract form. Performance shall include services rendered, obligations due, costs incurred, commodities and deliverables provided and accepted by the MBTA, programs provided, or other commitments authorized under a Contract. A deliverable shall include any tangible product to be delivered as an element of performance under a Contract. The MBTA is entitled to ownership and possession of all deliverables purchased or developed with MBTA funds.

11.1. Contract Effective Start Date

Notwithstanding verbal or other representations by the parties, or an earlier start date indicated in a Contract, the effective start date of performance under a Contract shall be the date a Contract has been executed by an authorized signatory of the Contractor, the MBTA, a later date specified in the Contract or the date of any approvals required by law or regulation, whichever is later.

11.2. Personal Liability of Authority Official

In carrying out any of the provisions of the Contract, or in exercising any power or authority granted to them or within the scope of the Contract, there shall be no liability upon the Board of Directors, the Director of Materials Management, or authorized representatives thereof, either personally or as officials of the MBTA, it being understood that in all such matters they act solely as agents and representatives of the MBTA.

11.3. Hiring of MBTA Retirees

Bidder shall certify that, if awarded the Contract, it will comply with the MBTA's Hiring of Retirees Policy. The MBTA's Hiring of Retirees Policy prohibits the Authority from contracting with the MBTA retiree or an employment agency for the MBTA retiree's direct services. Bidder's requirements are stated herein. The Bidder is required to notify the MBTA as part of the bidding process that a MBTA retiree will be included as a member of its team. The Bidder shall provide the name and date of retirement of each MBTA retiree on the team. Every MBTA retiree working for the MBTA under this condition shall do so in accordance with M.G.L., Chapter 268A, Section 5. After award, Bidder is required to provide immediate notification of the arrival or departure of all MBTA retirees, and periodic updates upon request by the MBTA, throughout the life of the contract.

11.4. Headings Not Binding

The headings appearing at the beginning of the articles, sections, parts, paragraphs or subparagraphs in this Contract have been inserted for identification and reference purposes only.

11.5. Binding Effect

This Agreement shall be binding upon and shall inure to the benefit of the respective successors and permitted assigns of the Contractor and the MBTA.

11.6. Precedence of Documents

The contract shall consist of the documents detailed below. In the event of any inconsistency between any requirement or provision of the Contract, the inconsistency shall be resolved by giving precedence, in descending order, to the following:

1. Contract Documents

- a. Memorandum of Agreement and any executed Change Orders and Amendments.
- b. RFP No. 67F-20, inclusive of all Amendments and Addenda.
- c. Contract Drawings
- d. Bonds/Certificates, Certificates of Insurance, Affidavits and other forms as pertinent
- e. Contractor's Proposal, inclusive of all clarifications and Best and Final Offers and excluding any provisions rejected or struck by the MBTA as unacceptable.

2. Change Order(s) & Amendment(s)

Any Change Order and Amendment that is subsequently executed shall make reference to become a part of this Contract and shall take precedence as applicable.

3. Change Order(s) & Amendment(s)

Any Change Order and Amendment that is subsequently executed shall make reference to become a part of this Contract and shall take precedence as applicable.

The Contractor shall not take advantage of any apparent error or omission in the Contract Documents. In the event the Contractor shall discover such an error or omission, the Authority shall immediately be notified. The Authority shall then make such corrections and interpretations as may be deemed necessary for fulfilling the intent of the Contract.

The individual documents comprising the Contract Documents are complementary and are intended to describe the work. Anything mentioned in the Specifications (Technical Provisions) and not shown on the Contract Documents or shown on the Contract Documents and not mentioned in the Specifications, shall be of like effect as if shown or mentioned in both. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the work.

The Contractor shall verify all figures on the Contract Drawings before commencing the work; shall promptly notify the MBTA Technical Project Manager of any errors, inconsistencies, or omissions which may be discovered; and obtain specific instructions in writing before proceeding with the work. Omission from Contract Drawings or Specifications or the misdescription of details of work which are manifestly necessary to carry out the intent of the Contract Drawings and Specifications, or which are customarily performed, shall not relieve the Contractor from performing such omitted work (no matter how extensive) or misdescribed details of the work and they shall be performed as if fully and correctly set forth and described in the Contract Drawings and Specifications at no additional expense or delay to the Authority.

11.7. Payments and Compensation

The Contractor shall only be compensated for performance delivered and accepted by the MBTA in accordance with the specific Terms and Conditions of a Contract. Overpayments shall be reimbursed by the Contractor or may be offset by the MBTA from future payments in accordance with state finance law. Acceptance by the Contractor of any payment or partial payment, without any written objection by the Contractor, shall in each instance operate as a release and discharge of the MBTA from all claims, liabilities or other obligations relating to the performance of a Contract.

11.8. Contractor Payment Mechanism

All Contractors will be paid using the MBTA invoicing system and Contractor will submit its invoice with all supporting documentation as prescribed in a Contract. The MBTA shall review and return rejected invoices within fifteen (15) days of receipt with a written explanation for rejection, provided that payment periods listed in a Contract of less than thirty (30) days from the date of receipt of an invoice shall be effective only to enable the MBTA to take advantage of early payment incentives and shall not subject any payment made within the thirty (30) day period to a penalty.

11.9. Contract Termination, Suspension, Force Majeure

A Contract shall terminate on the date specified in a Contract, unless this date is properly amended in accordance with all applicable laws and regulations prior to this date, or unless terminated or suspended under this Section upon prior written notice to the Contractor.

1. Termination by MBTA

The MBTA may terminate a Contract without cause and without penalty, or may terminate or suspend a Contract if the Contractor breaches any material term or condition or fails to perform or fulfill any material obligation required by a Contract, or in the event of an elimination of an appropriation or availability of sufficient funds for the purposes of a Contract, or in the event of an unforeseen public emergency mandating immediate MBTA action.

The Contractor shall be paid its costs, including Contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to be paid by the Authority.

If the Contractor has any property in its possession belonging to the Authority, the Contractor shall account for the same, and dispose of it in the manner the Authority directs.

2. Force Majeure

Upon immediate notification to the other party, neither the MBTA nor the Contractor shall be deemed to be in breach for failure or delay in performance due to Acts of God or other causes factually beyond their control and without their fault or negligence (“Force Majeure Event”). Subcontractor failure to perform or price increases due to market fluctuations or product availability will not be deemed factually beyond the Contractor’s control.

Within thirty (30) calendar days after the last day of delay resulting from a Force Majeure Event, the Contractor shall furnish the MBTA with detailed information concerning the circumstances of the delay, the number of days actually delayed, the appropriate Agreement references, and the measures taken to prevent or minimize the delay. Upon review of the detailed information concerning the delay, the MBTA shall assess the impact the delay may have on price and schedule of the work and modify the Contract as needed in accordance with (Change Order).

3. Termination for Cause

If the work to be done under this Contract, or if the performance of the Contract is unnecessarily or unreasonably delayed by the Contractor; or if the Contractor is violating any material term of the Contract Documents; or the Contractor is not executing the same in good faith or in accordance with the term thereof; or if the Contractor shall become insolvent or be declared bankrupt or commit any act of bankruptcy or insolvency, the Authority may give notice, in writing, to the Contractor and its surety of such delay, neglect, or default, specifying the same; and, if the Contractor shall not proceed to cure the delay, neglect, or default within a period of twenty-one (21) days after such notice, then the Authority, because of such delay, neglect, or default, and the Contractor's failure to comply with such notice shall have full power and authority to:

- A. Declare the Contractor to be in default; and the Authority may thereupon notify the Contractor, by written notice at least 21 calendar days prior to the effective date of such termination, to discontinue all work, or any part thereof, under this Contract; and thereupon the Contractor shall discontinue the work, or such part thereof, and the Authority shall have the right, as the Authority may determine, to have the surety complete the work or to contract for the completion of the work, or such part thereof, to procure other materials, plant, tools, appliances, equipment, suppliers and property for the completion of the work, or such part thereof, and to charge the expense of said labor and materials, plant, tools, appliance, equipment, supplies and property to the Contractor.

The expense so charged may be deducted and paid for by the Authority out of such monies as may be due or at any time thereafter become due to the Contractor under and by virtue of this Contract, and the Contractor shall, upon completion of the work, or such part thereof, or from time to time during the course of the completion of the work, or such part thereof, as the Authority may require, forthwith pay to the Authority the excess, if any, of the cost to the Authority of the completion of the work, or such part thereof, over the amount payable to the Contractor for the same work and materials under the terms of this Contract; provided, however, that the Contractor shall not be liable to the Authority for any damages incurred solely by reason of the fault of a new Contractor engaged by the Authority or the Contractor's surety; and the completion of the work, or such part thereof, by the Authority shall not release or discharge the Contractor from liability for the remainder of the work hereunder; and when any particular part of the work is being carried on by the Authority by Contract or otherwise under the provisions of this Paragraph "A", the Contractor, unless directed to discontinue all work, shall continue the remainder of the work in conformity with the terms of this Contract and in such manner not to hinder or interfere with other Contractors of the Authority, or with persons or workmen employed, as above provided by the Authority by Contract or otherwise, to do any part of the work or to complete the same under the provision of this Paragraph "A"; or

- B. Declare this Contract at an end, except as to the liability of the Contractor hereinafter in this paragraph provided for, and the Authority shall thereupon have the right to have the surety contract the work or to contract for the completion of the work, to procure other materials, plant, tools, appliances, equipment, supplies and property for the completion of the same.
- i. If the expense to the Authority of completing the work (including the expense of procuring other materials, plant, tools, appliance, equipment, supplies and property) shall exceed that amount which would have been payable to the Contractor for the same work and materials under this Contract had the Contractor completed the Contract, the Contractor shall, upon completion of the work, as the Authority may require, pay the amount of the excess to the Authority.
 - ii. The Contractor shall also pay to the Authority the amount of any claim for which the Authority may be liable for injury to persons or property occurring on account of any work done by the Contractor under this Contract, by reason of negligence, fault or default of the Contractor, or for infringement of patents, or for any neglect, fault, or default of the Contractor, as herein above set forth, and shall also pay to the Authority the amount of any payment which the Authority may be required to make, and the amount of any loss or damage which the Authority may incur or suffer, and for which the Contractor may be liable by any neglect, fault or default of the Contractor; and
 - iii. Transfer title to the Authority and deliver in the manner, at the times, and to the extent, if any, directed by the Contracting Officer the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated, and the completed or partially completed plans, drawings, information, and other property which, if the Contract had been completed, would have been furnished to the Authority.

- C. The Authority may also proceed as it deems proper upon the bonds or other security in its possession; and
 - D. The Authority may also bring any suit or proceeding for specific performance, injunction, or to recover damages, obtain any other relief, or for any other purpose proper under this Contract.
4. Suspension of Work
- A. The Authority, for reasons beyond its control, may at any time, by written order to the Contractor, stop all or any part of the work called for by this Contract for a period of thirty (30) days upon delivery of the order to the Contractor and for any further period to which the parties may agree. Any such order shall be specifically identified as a Stop Work Order issued pursuant to this Section. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to mitigate the costs allocable to the work covered by the order during the period of work stoppage. Within a period of thirty (30) days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Authority shall either:
 - i. Cancel the Stop Work Order; or
 - ii. Terminate the work covered by such order and pay to the Contractor all reasonable termination charges.
 - B. If a Stop Work Order issued under this Section is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. An equitable adjustment will be made in the delivery schedule or Contract price, or both, and the Contract will be modified in writing accordingly, if:
 - i. The Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to, their performance of any part of this Contract; and
 - ii. The Contractor asserts a claim for such adjustment within thirty days after the end of the period of work stoppage; provided that, if the Authority decides the facts justify such action, the Contractor may receive and act upon such claim asserted at any time prior to final payment under the Contract.
 - C. If a Stop Work Order is not canceled and the work covered by such order is terminated hereunder, the reasonable costs resulting from the Stop Work Order will be allowed in arriving at the termination settlement.

11.10. Written Notice

Any notice shall be deemed delivered and received when submitted in writing in person or when delivered by any other appropriate method evidencing actual receipt by the MBTA or the Contractor. Any written notice of termination or suspension delivered to the Contractor shall state the effective date and period of the notice, the reasons for the termination or suspension, if applicable, any alleged breach or failure to perform, a reasonable period to cure any alleged breach or failure to perform, if applicable, and any instructions or restrictions concerning allowable activities, costs or expenditures by the Contractor during the notice period.

11.11. Record-keeping and Retention, Inspection of Records

The Contractor shall maintain records, books, files and other data as specified in a Contract and in such detail as shall properly substantiate claims for payment under a Contract, for a minimum retention period of seven (7) years

beginning on the first day after the final payment under a Contract, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving a Contract. The MBTA shall have access, as well as any parties identified under Executive Order 195, during the Contractor's regular business hours and upon reasonable prior notice, to such records, including on-site reviews and reproduction of such records at a reasonable expense.

11.12. Assignment

Neither the Contract nor any interest herein shall be assigned, pledged or otherwise transferred by the Contractor without the written consent of the MBTA, except in the case of a transfer of all or substantially all of the Contractor's assets provided that all obligations of this Contract are assumed by the controlling entity. If the Contractor makes any such assignment, pledge or other transfer without the written consent of the MBTA, the Contract shall be voidable at the election of the MBTA. The MBTA's consent to any such assignment, pledge or other transfer may impose such additional conditions thereon as may be deemed necessary to ensure the performance of the terms of the Contract by the assignee. Moreover, unless otherwise agreed to in writing by the MBTA, any transfer by the Contractor shall not release the Contractor of its liability under the Contract. The sale of fifty percent (50%) or more of the equity ownership of a Contractor shall be considered an assignment requiring the prior written approval of the MBTA.

11.13. Subcontracting by Contractor

The Contractor certifies full responsibility for Contract performance, including subcontractors, and that comparable Contract terms will be included in subcontracts, and that the MBTA will not be required to directly or indirectly manage subcontractors or have any payment obligations to subcontractors. Subcontracts will not relieve or discharge the Contractor from any duty, obligation, responsibility or liability arising under a Contract. Subcontracts shall note that the MBTA is not a party to the subcontract.

The Contractor shall not sublet, sell, transfer, assign, or otherwise dispose of the Contract or any portion thereof, or its right, title, or interest therein, if the cost exceeds 10% of the Contract amount, or if the Subcontractor/Supplier is to supply any of the major systems without written consent of the Authority.

In requesting such consent, the Contractor shall notify the Authority of the work to be performed by the proposed Subcontractor/Supplier and the Subcontractor's/Supplier's name.

The Subcontractor (Vendor or Supplier) shall look only to the Contractor for the payment of the claims arising out of any subcontract. The Contractor shall include in all agreements with Subcontractors/Suppliers, as pertaining to this Contract, that its Subcontractor/Supplier shall make no claim for payment against the Authority, its members or agents, for any work performed or thing done by reasons of the Subcontract, or for any other cause for payment that may arise by reason of the relationship created between the Contractor and the Subcontractor/Supplier by the Subcontract. Failure to promptly pay a Sub-Contractor for work performed where the Contractor has been paid by the MBTA shall constitute a material breach of the Contract between MBTA and Contractor.

The Contractor shall provide the Authority with a list of DBE and Non-DBE Subcontractors and Major Suppliers for all equipment, assemblies, sub-assemblies and components installed, tested, and/or certified for this program.

Note: The Bidder in preparing a proposal submission must include, at a minimum, the proposed subcontractors/suppliers under its consideration, in the forms provided with Section 12, Attachment 3 - DBE Certification and Attachment 5 – Non-DBE Subcontractor List.

11.14. Affirmative Action, Non-Discrimination in Hiring and Employment

The Contractor shall comply with all federal and state laws, rules and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, handicap, sexual orientation or for exercising any rights afforded by law. The Contractor commits to purchasing supplies and services from certified minority or women-owned businesses, small businesses or businesses owned by socially or economically disadvantaged persons or persons with disabilities.

11.15. Indemnification

The Contractor agrees to indemnify, save harmless, and defend the MBTA and all of its officers, agents, and employees from and against any and all third party suits, claims, or proceedings (“Claims”), and any losses, damages, charges or expenses, whether direct or indirect, and liability of every name and nature related to such Claims (“Liabilities”) for or due to any loss or injury to persons or damages to real or tangible property to the extent caused by the Contractor or its employees, subcontractors or agents.

The MBTA agrees that the Contractor shall not be responsible for any Claims or Liabilities that may be imposed upon or incurred by or asserted against the Contractor to the extent that those Claims or Liabilities are caused by any negligent act or negligent failure to act by MBTA or its agents, employees, or subcontractors.

The Contractor being bound by all applicable state and federal regulations hereby expressly agrees to hold the MBTA harmless against all audit exceptions or denials of the reimbursement arising from the Contractor's violation of the terms and conditions of state and federal laws. The Contractor shall make restitution to the MBTA of such amounts of money as are withheld from the Authority by state, federal, county or local agencies or organizations due to the Contractor's noncompliance with applicable state and federal law, provided that in the event of any claim for such restitution, the MBTA provides the Contractor with prompt notice of such claim and allows the Contractor to contest such claim. Restitution shall be made no later than sixty (60) days after receipt of notification from the MBTA that monies are due to the MBTA.

Defense of Indemnification. The Contractor shall be notified in writing by the MBTA within a reasonable period of time of the assertion of any Claim against it that the Contractor has agreed to indemnify above (the “Indemnified Claim”). If the MBTA decides to itself conduct the defense of an Indemnified Claim against it or to conduct any other response itself, the Contractor shall reimburse the MBTA for all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by the MBTA in connection with the MBTA's defense of the Indemnified Claim against it and/or the conduct of all response actions. If the MBTA decides to have the Contractor defend the Indemnified Claim or handle the response action, the MBTA shall notify the Contractor of that decision in writing. In such instances, the Contractor shall bear the entire cost thereof and shall have sole control of the defense of any Indemnified Claim and all negotiations for its settlement or compromise provided that the MBTA is fully indemnified by the Contractor and that the settlement or compromise shall not include the admission of guilt or comparable plea, wrongdoing or negligence, the permitting or imposition of civil or criminal penalties or indictments, the entering of consent decrees or orders of any kind by the Contractor on behalf of the MBTA, or any other action that would materially prejudice the rights of the MBTA without the MBTA's express written approval. The MBTA shall cooperate fully with the Contractor in the defense of any Indemnified Claim.

11.16. Waivers

Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor shall it in any way limit the legal or equitable remedies available to that party. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach.

11.17. Risk of Loss

Risk of loss or damage with respect to equipment or material covered by the Contract Documents shall pass to the Authority when "delivered" within the meaning of Specification VE20-051 at the MBTA Bus Operations designated delivery point, unless the loss or damage is determined to be the direct result of faulty workmanship by the Contractor or by faulty material supplied by the Contractor.

Title to the Authority's equipment shall remain in the Authority and shall not be divested by any repairs that may be made to the property of the Authority.

11.18. Forum, Choice of Law and Mediation

Any actions arising out of a Contract shall be governed by the laws of Massachusetts and shall be brought and maintained in a State or federal court in Massachusetts which shall have exclusive jurisdiction thereof. The MBTA and the Contractor may agree to voluntary mediation through the Massachusetts Office of Dispute Resolution (MODR) of any Contract dispute and will share the costs of such mediation. No legal or equitable rights of the parties shall be limited by this Section.

11.19. Interpretation, Severability, Conflicts with Law, Integration

Any amendment or attachment to any Contract which contains conflicting language or has the effect of a deleting, replacing or modifying any printed language of these MBTA Terms and Conditions, shall be interpreted as superseded by the official printed language. If any provision of a Contract is found to be superseded by state or federal law or regulation, in whole or in part, then both parties shall be relieved of all obligations under that provision only to the extent necessary to comply with the superseding law, provided however, that the remaining provisions of the Contract, or portions thereof, shall be enforced to the fullest extent permitted by law. which incorporates by reference these MBTA Terms and Conditions, shall supersede any conflicting verbal or written agreements relating to the performance of a Contract, or attached thereto, including contract forms, purchase orders or invoices of the Contractor. The order of priority of documents to interpret a Contract shall be as follows: any applicable federal provisions, any supplemental provisions, any negotiated terms and conditions allowable pursuant to law or regulation; the printed language of the MBTA Terms and Conditions; the Standard Contract; the MBTA's Request for Response/Proposal/Bid (RFR/RFP/IFB) solicitation document; and the Contractor's Response to the RFR/RFP/IFB solicitation, excluding any language stricken by the MBTA as unacceptable.

11.20. Entire Agreement

This Agreement and any attachments or documents incorporated herein by inclusion or by reference, constitutes the complete and entire Agreement between the Contractor and the MBTA (hereinafter the "Parties") and supersedes any prior representations, understandings, communications, commitments, agreements or proposals, oral or written, and is not intended to confer upon any person other than the Parties any rights or remedies hereunder.

11.21. Contractor Certifications and Legal References

The Contractor makes all certifications required under this Contract under the pains and penalties of perjury and agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein.

11.21.1. MBTA and Contractor Ownership Rights

The Contractor certifies and agrees that the MBTA is entitled to ownership and possession of all "deliverables" purchased or developed with Contract funds.

11.21.2. Qualifications

The Contractor certifies it is qualified and shall at all times remain qualified to perform this Contract; that performance shall be timely and meet or exceed industry standards for the performance required, including obtaining requisite licenses, registrations, permits, resources for performance, and sufficient professional, liability; and other appropriate insurance to cover the performance. If the Contractor is a business, the Contractor certifies that it is listed under the Secretary of State's website as licensed to do business in Massachusetts, as required by law.

11.21.3. Business Ethics and Fraud, Waste and Abuse Prevention

The Contractor certifies that performance under this Contract, in addition to meeting the terms of the Contract, will be made using ethical business standards and good stewardship of taxpayer and other public funding and resources to prevent fraud, waste and abuse.

11.21.4. Collusion

The Contractor certifies that this Contract has been offered in good faith and without collusion, fraud or unfair trade practices with any other person, that any actions to avoid or frustrate fair and open competition are prohibited by law, and shall be grounds for rejection or disqualification of a Response or termination of this Contract.

Included with the response to RFP 142F-20, the Bidder shall sign an affidavit stating that Bidder understands that any Proposal submitted to the MBTA is made without collusion with any other Bidder submitting a Proposal on the same commodity/service, and is in all respects fair and without fraud.

11.21.5. Public Records and Access

The Contractor shall provide full access to records related to performance and compliance to the MBTA pursuant to G.L. c. 11, s.12 for seven (7) years beginning on the first day after the final payment under this Contract or such longer period necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving this Contract. Access to view Contractor records related to any breach or allegation of fraud, waste and/or abuse may not be denied, and Contractor cannot claim confidentiality or trade secret protections solely for viewing but not retaining documents. Routine Contract performance compliance reports or documents related to any alleged breach or allegation of non-compliance, fraud, waste, abuse or collusion may be provided electronically and shall be provided at Contractor's own expense. Reasonable costs for copies of non-routine Contract related records shall not exceed the rates for public records under the Massachusetts Public Records Law.

11.21.6. Debarment

The Contractor certifies that neither it nor any of its subcontractors are currently debarred or suspended by the federal or state government under any law or regulation.

11.21.7. Applicable Laws

The Contractor shall comply with all applicable state laws and regulations including but not limited to the applicable Massachusetts General Laws; Code of Massachusetts Regulations 801 CMR 21.00 (Procurement of Commodity and Service Procurements); M.G.L. c. 66A; and the Massachusetts Constitution Article XVIII if applicable.

11.21.8. Tax Law Compliance

The Contractor certifies under the pains and penalties of perjury tax compliance with Federal tax laws; state tax laws including but not limited to G.L. c. 62C, G.L. c. 62C, s. 49A; compliance with all state tax laws, reporting of employees and contractors, withholding and remitting of tax withholdings and child support and is in good standing with respect to all state taxes and returns due; reporting of employees and contractors under G.L. c. 62E, withholding and remitting child support including G.L. c. 119A, s. 12; TIR 05-11; New Independent Contractor Provisions and applicable TIRs.

11.21.9. Bankruptcy, Judgments, Potential Structural Changes, Pending Legal Matters and Conflicts

The Contractor certifies it has not been in bankruptcy and/or receivership within the last three calendar years, and the Contractor certifies that it will immediately notify the Department in writing at least 45 days prior to filing for bankruptcy and/or receivership, any potential structural change in its organization, or if there is any risk to the solvency of the Contractor that may impact the Contractor's ability to timely fulfill the terms of this Contract or Amendment. The Contractor certifies that at any time during the period of the Contract the Contractor is required to affirmatively disclose in writing to the Department Contract Manager the details of any judgment, criminal conviction, investigation or litigation pending against the Contractor or any of its officers, directors, employees, agents, or subcontractors, including any potential conflicts of interest of which the Contractor has knowledge, or learns of during the Contract term. Law firms or Attorneys providing legal services are required to identify any potential conflict with representation of any Department client in accordance with Massachusetts Board of Bar Overseers (BBO) rules.

11.21.10. Protection of Commonwealth Data, Personal Data and Information

The Contractor certifies that all steps will be taken to ensure the security and confidentiality of all Commonwealth/MBTA data for which the Contractor becomes a holder, either as part of performance or inadvertently during performance, with special attention to restricting access, use and disbursement of personal data and information under M.G.L. c. 93H and c. 66A and other applicable state and federal privacy requirements. The Contractor shall comply with M.G.L. c. 93I for the proper disposal of all paper and electronic media, backups or systems containing personal data and information. The Contractor shall also ensure that any personal data or information transmitted electronically or through a portable device is properly encrypted using (at a minimum) the Commonwealth's "Cryptographic Management Standard" set forth in the Enterprise Information Security Policies and Standards published by the Executive Office for Technology, Services and Security (TSS), or a comparable Standard prescribed by the MBTA. Contractors with access to credit card or banking information of Commonwealth/MBTA customers certify that the Contractor is PCI compliant in accordance with the Payment Card Industry Council Standards, and shall provide confirmation compliance during the Contract. The Contractor shall immediately notify the MBTA

in the event of any security breach including the unauthorized access, disbursement, use or disposal of personal data or information, and in the event of a security breach, the Contractor shall cooperate fully with the MBTA and provide access to any information necessary for the MBTA to respond to the security breach and shall be fully responsible for any damages associated with the Contractor's breach including but not limited to G.L. c. 214, s. 3B.

For all Contracts involving the Contractor's access to personal information, as defined in G.L. c. 93H, and personal data, as defined in G.L. c. 66A, or access to MBTA or Commonwealth systems containing such information or data, Contractor certifies under the pains and penalties of perjury that the Contractor (1) has read M.G.L. c. 93H and c. 66A and agrees to protect any and all personal information and personal data; and (2) has reviewed all of the Enterprise Information Security Policies and Standards published by the Executive Office for Technology Services and Security (TSS), or stricter standards prescribed by the MBTA. Notwithstanding any contractual provision to the contrary, in connection with the Contractor's performance under this Contract, for all public authorities, executive offices, boards, commissions, agencies, departments, divisions, councils, bureaus, and offices, now existing and hereafter established, the Contractor shall: (1) obtain a copy, review, and comply with any pertinent security guidelines, standards, and policies; (2) comply with all Enterprise Information Security Policies and Standards published by the Executive Office for Security Services and Technology (TSS), or a comparable set of policies and standards ("Information Security Policy") as prescribed by the MBTA; (3) communicate and enforce such security guidelines, standards, policies and the applicable Information Security Policy among all employees (whether such employees are direct or contracted) and subcontractors; (4) implement and maintain any other reasonable appropriate security procedures and practices necessary to protect personal information and data to which the Contractor is given access by the MBTA from the unauthorized access, destruction, use, modification, disclosure or loss; (5) be responsible for the full or partial breach of any of these terms by its employees (whether such employees are direct or contracted) or subcontractors during or after the term of this Contract, and any breach of these terms may be regarded as a material breach of this Contract; (6) in the event of any unauthorized access, destruction, use, modification, disclosure or loss of the personal information or personal data (collectively referred to as the "unauthorized use"): (a) immediately notify the MBTA if the Contractor becomes aware of the unauthorized use; (b) provide full cooperation and access to information necessary for the MBTA to determine the scope of the unauthorized use; and (c) provide full cooperation and access to information necessary for the MBTA and the Contractor to fulfill any notification requirements. Breach of these terms may be regarded as a material breach of this Contract, such that the Commonwealth and MBTA may exercise any and all contractual rights and remedies, including without limitation indemnification under Section 8.1.11 of MBTA's Terms and Conditions, withholding of payments, Contract suspension, or termination. In addition, the Contractor may be subject to applicable statutory or regulatory penalties, including and without limitation, those imposed pursuant to G.L. c. 93H and under G.L. c. 214, § 3B for violations under M.G.L c. 66A.

11.21.11. Corporate and Business Filings and Reports

The Contractor certifies compliance with any certification, filing, reporting and service of process requirements of the Secretary of and other Departments as related to its conduct of business in the Commonwealth; and with its incorporating state (or foreign entity).

11.21.12. Employer Requirements

Contractors that are employers certify compliance with applicable state and federal employment laws or regulations, including but not limited to G.L. c. 5, s. 1 (Prevailing Wages for Printing and Distribution of Public Documents); G.L. c. 7, s. 22 (Prevailing Wages for Contracts for Meat Products and Clothing and Apparel); minimum wages and prevailing wage programs and payments; unemployment insurance and contributions; workers' compensation and insurance, child labor laws, AGO fair labor practices; G.L. c. 149 (Labor and Industries); G.L. c. 150A (Labor Relations); G.L. c. 151 and 455 CMR 2.00 (Minimum

Fair Wages); G.L. c. 151A (Employment and Training); G. L. c. 151B (Unlawful Discrimination); G.L. c. 151E (Business Discrimination); G.L. c. 152 (Workers' Compensation); G.L. c.153 (Liability for Injuries); 102 CMR 12.00 (Dependent Care Assistance Program); 29 USC c. 8 (Federal Fair Labor Standards); 29 USC c. 28 and the Federal Family and Medical Leave Act and M.G.L. c. 175M (Family and Medical Leave).

11.21.13. Federal and State Laws and Regulations Prohibiting Discrimination

Contractors certify compliance with applicable state and federal anti-discrimination laws including but not limited to the Federal Equal Employment Opportunity (EEO) Laws the Americans with Disabilities Act.; 42 U.S.C Sec. 12,101, et seq., the Rehabilitation Act, 29 USC c. 16 s. 794; 29 USC c. 16. s. 701; 29 USC c. 14, 623; the 42 USC c. 45; (Federal Fair Housing Act); G. L. c. 151B (Unlawful Discrimination); G.L. c. 151E (Business Discrimination); the Public Accommodations Law G.L. c. 272, s. 92A; G.L. c. 272, s. 98 and 98A, Massachusetts Constitution Article CXIV and G.L. c. 93, s. 103; 47 USC c. 5, sc. II, Part II, s. 255 (Telecommunication Act; Chapter 149, Section 105D, G.L. c. 151C, G.L. c. 272, Section 92A, Section 98 and Section 98A, and G.L. c. 111, Section 199A, and Massachusetts Disability-Based Non-Discrimination Standards For Executive Branch Entities, and related Standards and Guidance, authorized under Massachusetts Executive Order or any disability-based protection arising from state or federal law or precedent. See also MCAD and MCAD links and Resources.

11.21.14. Right-to-Know Law

The Contractor shall certify that it will comply with the Massachusetts Right-To-Know Law, Chapter 470 of the Acts of 1983. Additionally, the Contractor agrees to submit a Safety Data Sheet (SDS) for each toxic or hazardous substance, or mixture containing such substance, pursuant to M.G.L. c. 111F §§ 8, 9, and 10, and the regulations contained in 454 CMR § 21.06 when deliveries are made.

The Contractor agrees to deliver all containers properly labeled pursuant to M.G.L. c. 111F § 7 and regulations contained in 454 CMR § 21.05. Failure to submit a SDS and/or label on each container will place the Contractor in noncompliance with the purchase order.

Copies of all SDSs shall be provided to the Technical Project Manager.

11.21.15. Other Damages

LIMITATION OF LIABILITY

Notwithstanding anything herein to the contrary, the Contractor's maximum aggregate liability for any loss or damages (other than patent infringement, death or personal injury) incurred by the MBTA as a result of or in consequence of the acts or omissions of the Contractor, its employees, subcontractors or agents in the performance of services covered by this Agreement shall not exceed one hundred percent (100%) of the Contract value plus any adjusted value per executed change order; provided, however, that if the Contractor's applicable insurance coverage is greater than this amount, the limit of liability for the Contract shall be the total insurance coverage.

IT IS AGREED AND UNDERSTOOD THAT THE MBTA SHALL BE ENTITLED TO RECOVER DIRECT DAMAGES INCLUDING "BENEFIT-OF-THE-BARGAIN" EXPECTATION DAMAGES AND DAMAGES FOR BREACH OF WARRANTY SUBJECT TO THE LIMITATION OF LIABILITY, AND THAT IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR ANY LOSS OF PROFITS, LOSS OF REVENUES OR LOSS OR FAILURE TO REALIZE ANTICIPATED SAVINGS OR EFFICIENCIES ARISING IN CONNECTION WITH THIS AGREEMENT.

11.21.16. Northern Ireland Certification

Pursuant to G.L. c. 7 s. 22C for state agencies, state authorities, the House of Representatives or the state Senate, by signing this Contract the Contractor certifies that it does not employ ten or more employees in an office or other facility in Northern Ireland and if the Contractor employs ten or more employees in an office or other facility located in Northern Ireland the Contractor certifies that it does not discriminate in employment, compensation, or the terms, conditions and privileges of employment on account of religious or political belief; and it promotes religious tolerance within the work place, and the eradication of any manifestations of religious and other illegal discrimination; and the Contractor is not engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles or military aircraft for use or deployment in any activity in Northern Ireland.

11.21.17. Pandemic, Disaster or Emergency Performance

In the event of a serious emergency, pandemic or disaster outside the control of the MBTA, the MBTA may negotiate emergency performance from the Contractor to address the immediate needs of the MBTA even if not contemplated under the original Contract or procurement. Payments are subject to appropriation and other payment terms.

11.22. Executive Orders

For covered Executive state Departments, the Contractor certifies compliance with applicable Executive Orders (see also Massachusetts Executive Orders), including but not limited to the specific orders listed below. A breach during period of a Contract may be considered a material breach and subject Contractor to appropriate monetary or Contract sanctions.

11.22.1. Executive Order 481. Prohibiting the Use of Undocumented Workers on State Contracts

For all state agencies in the Executive Branch, including all executive offices, boards, commissions, agencies, Departments, divisions, councils, bureaus, and offices, now existing and hereafter established, by signing this Contract the Contractor certifies under the pains and penalties of perjury that they shall not knowingly use undocumented workers in connection with the performance of this Contract; that, pursuant to federal requirements, shall verify the immigration status of workers assigned to a Contract without engaging in unlawful discrimination; and shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker.

11.22.2. Executive Order 130. Anti-Boycott

The Contractor warrants, represents and agrees that during the time this Contract is in effect, neither it nor any affiliated company, as hereafter defined, participates in or cooperates with an international boycott (See IRC § 999(b)(3)- (4), and IRS Audit Guidelines Boycotts) or engages in conduct declared to be unlawful by G.L. c. 151E, s. 2. A breach in the warranty, representation, and agreement contained in this paragraph, without limiting such other rights as it may have, the MBTA shall be entitled to rescind this Contract. As used herein, an affiliated company shall be any business entity of which at least 51% of the ownership interests are directly or indirectly owned by the Contractor or by a person or persons or business entity or entities directly or indirectly owning at least 51% of the ownership interests of the Contractor, or which directly or indirectly owns at least 51% of the ownership interests of the Contractor.

11.22.3. Conflict of Interest and Executive Order 346. Hiring of State Employees By State Contractors

Massachusetts Conflict of Interest Law, G.L. c. 268A, governs the conduct of all public officials and employees, including all dealings with potential contractors. It is the responsibility of Contractor to ensure compliance with the Commonwealth's Conflict of Interest Laws and avoid any conduct which might result in or give the appearance of creating for the Authority or its representatives in their relationship with the Contractor any conflicts of interest or favoritism and/or the appearance thereof or any conduct which might result failure to comply with G.L., c. 268A. Non-compliance with these Conflict of Interest terms shall constitute a material breach of this Contract.

For purposes of this solicitation, it is understood and agreed that no gift, loan or other thing has been or will be given to any employee, agent or officer of the MBTA by the Bidder, Bidder's employees, subcontractors, or agents in connection with the award or performance of this Contract. It is further understood and agreed that no Board member, officer, or employee of the MBTA; no officer or employee of any independent authority or political subdivision of the Commonwealth of Massachusetts, no officer, employee, or elected official of the Commonwealth of Massachusetts, executive or legislative of any city, county, or town within the 175 cities and towns serviced by the MBTA; and no member or delegate to the Congress of the United States, during his/her tenure shall have any financial interest, direct or indirect, in this Contract or the proceeds thereof.

If, during the performance of this Contract and any extension thereof, the Contractor becomes aware of any relationship, financial interest, or other activity in which it or an affiliated person or company is involved which is not in compliance with these provisions, the Contractor shall promptly notify the Authority's Contracting Officer in writing and fully disclose all circumstances thereof. The Authority reserves the right to grant an exception to the requirements of this Section, if so allowed by law, and notify the Contractor thereof. If the Authority does not grant an exception, the Contractor shall, within ten (10) days of written notice from the Authority, take all action necessary to comply with the terms stated herein.

The Bidder shall certify compliance with these terms and the Massachusetts Conflict of Interest Laws.

Additionally, Contractor certifies compliance with both the conflict of interest law G.L. c. 268A, s. 5 (f) and E.O. 346, which impose limitations regarding the hiring of state employees by private companies contracting with the MBTA. A privatization contract shall be deemed to include a specific prohibition against the hiring at any time during the term of Contract, and for any position in the Contractor's company, any state management employee who is, was, or will be involved in the preparation of the RFP, the negotiations leading to the awarding of the Contract, the decision to award the Contract, and/or the supervision or oversight of performance under the Contract.

11.22.4. Executive Order 444. Disclosure of Family Relationships with Other State Employees

Each person applying for employment (including Contract work) within the Executive Branch under the Governor must disclose in writing the names of all immediate family related to immediate family by marriage who serve as employees or elected officials of the Commonwealth. All disclosures made by applicants hired by the Executive Branch under the Governor shall be made available for public inspection to the extent permissible by law by the official with whom such disclosure has been filed.

11.22.5. Executive Orders 523, 526, and 565

Executive Order 523 (Establishing the Massachusetts Small Business Purchasing Program). Executive Order 526 (Order Regarding Non-Discrimination, Diversity, Equal Opportunity and Affirmative Action which supersedes Executive Order 478). Executive Order 565 (Reaffirming and Expanding the Massachusetts Supplier Diversity Program). All programs, activities, and services provided, performed, licensed, chartered, funded, regulated, or contracted for by the state shall be conducted without unlawful discrimination based on race, color, age, gender, ethnicity, sexual orientation, gender identity or expression, religion, creed, ancestry, national origin, disability, veteran's status (including Vietnam-era veterans), or background. The Contractor and any subcontractors may not engage in discriminatory employment practices. The Contractor certifies compliance with applicable federal and state laws, rules, and regulations governing fair labor and employment practices. The Contractor also commits to purchase supplies and services from certified minority, women, veteran, service-disabled veteran, LGBT or disability-owned businesses, small businesses, or businesses owned by socially or economically disadvantaged persons; and Contractor commits to comply with any applicable Department contractual requirements pertaining to the employment of persons with disabilities pursuant to M.G.L. c. 7 s. 61(s). These provisions shall be enforced through the contracting Department, OSD, and/or the Massachusetts Commission Against Discrimination. Any breach shall be regarded as a material breach of the contract that may subject the contractor to appropriate sanctions.

11.22.6. Laws and Regulations Prohibiting Discrimination and Human Trafficking

Contractors acknowledge and certify as a condition of this Contract that they are responsible for complying fully with all state and federal laws prohibiting discrimination, human trafficking, and forced labor, including but not limited to Chapter 178 of the Acts of 2011.

11.23. Supplemental Provisions

11.23.1. Applicability

Where applicable, these Supplemental Provisions shall apply to this RFP. In the event of a conflict or disparity between these Supplemental Provisions and Standard Terms & Conditions, the Supplemental Provisions govern.

11.23.2. Security Requirements

The Contractor shall certify that it will comply with the MBTA's Security Requirements as stated herein. The selected Contractor shall:

1. Submit a complete list of Contractor's employees, subcontractors, and agents that will perform work for the MBTA under this Contract. This list must be submitted prior to eligibility consideration for payment of delivery or completion of the first milestone. At a minimum, the list shall include:
 - a. Name and Employee Number/Identifier
 - b. Address
 - c. Job Title
 - d. Hours and Location of Work

Note: Immediate notification, in writing, is required for listed employees, subcontractors, and agents who leave Contractor's (direct or indirect) employment and/or any new employees,

subcontractors or agents who are to be added to this list. Contractor is required to provide, upon request by the MBTA, periodic updates of the list throughout the life of the Contract.

2. Conduct for all current and future employees performing work under this Contract, a legally available criminal background check, including a Criminal Offender Record Information (CORI) background check with the Massachusetts Criminal History Systems Board and a driver's history check with the Massachusetts registry of Motor vehicles (if applicable). The CORI check shall include a Level II Sex Offenders Registry check. To the extent not already available to the Contractor, the Contractor shall apply for and make best efforts to obtain CORI access. The Contractor shall provide written documentation to the Authority that demonstrates the Contractor's compliance with the aforementioned requirements. Furthermore, the Contractor shall conduct these background and driver history checks at least once every two (2) years, or as otherwise specified by the MBTA. Any employee of the Contractor's with a history that includes a felony conviction, any conviction for theft, or who appears otherwise unsuitable to perform the work that is the subject of this solicitation throughout the Term of this Agreement or any extensions thereof, shall not be assigned by the Contractor to perform work under this Agreement.

The MBTA reserves the right to have MBTA Transit Police perform the required background checks and shall promptly notify the Contractor in writing of any such action.

3. Distribute an MBTA-issued photograph Contractor identification badge to all Contractor employees, subcontractors, and agents who work on MBTA property. The contractor shall provide a current (less than 1 year old) photograph to the MBTA, along with the required completed badge issuance paperwork prior to being issued the badges. The following information shall be listed on the back of the contractor identification badges: training certifications, safety training, and other related security training required by the MBTA. No employee, subcontractor or agent of the Contractor will be allowed on MBTA property without clearly displaying the MBTA-issued identification badge on their person.
4. Insure that Contractor's employees, subcontractors, and agents:
 - a. Are not allowed on MBTA property except as required for stated work;
 - b. Are not allowed on MBTA property before and after service hours unless explicitly, contractually required to be there; and
 - c. Are forbidden from carrying firearms on MBTA property.
5. Provide to the MBTA, upon its request, any documents that pertain to:
 - a. Contractor employee, subcontractor or agent conduct on MBTA property;
 - b. Security training; and
 - c. Monitoring/auditing of Contractor employees or agents while on MBTA property.
6. If, at any time during the term of this Agreement, and also during any and all extensions thereof, the MBTA establishes new or revised security policies and procedures as they relate to the Contractor's performance under this Agreement, the Contractor shall comply with such policies and procedures as deemed reasonable by the MBTA and the Contractor.

11.23.3. Right-of-Way Safety Training Requirements

In the event the Contractor's work is to be performed in proximity to railroad, bus ways, or subway tracks, the Contractor shall obtain appropriate Right of Way safety training from the MBTA before commencing work.

11.23.4. Workplace Environment

The Contractor and its employees shall comply with the MBTA Dignity in the Workplace and 8 Free Workplace requirements. The Contractor's employees who violate either of these policies are to be removed from this Contract and are not to be employed on another MBTA contract. The Contractor also agrees to include the following requirements in each subcontract entered into as part of this Agreement.

MBTA Dignity in the Workplace Policy. In accordance with governing statutes, regulations, and collective bargaining agreements, and consistent with its existing policies, the MBTA demands of itself and its employees that all work and work-related activities be conducted with complete respect for the dignity of all employees. In practice, this means that no action, inaction or language which would offend a reasonable employee or which any reasonable employee deems unwelcome will be tolerated. All personnel decisions will be based solely on objective consideration of relevant articulated factors. No personnel decision will directly or indirectly be based on consideration of an employee's age, race, sex, religion, creed, color, sexual orientation, national origin, disability/handicap, ancestry or Vietnam era veteran's status. These prohibitions on harassment and impermissible discrimination are absolute.

Drug and Alcohol-Free Workplace Requirement. The Contractor, Contractor's employees, vendors, visitors, and volunteers are to be free of the effect of drugs, alcohol, controlled substances or other prohibitive substances when they are on MBTA property or performing MBTA business. In addition, all referenced parties are prohibited from using, possessing, selling or distributing any drugs, alcohol, controlled substances or other prohibited substances when they are on MBTA property or performing MBTA business. It is the responsibility of the Contractor to advise its employees of this requirement and to ensure that its employees meet this "fitness for duty" standard. Violators of this policy will not be allowed to remain on MBTA property or to continue conducting business for or with the MBTA. The Contractor will submit to the Authority within thirty (30) days of a Drug and Alcohol violation, a written report documenting the actions taken with regard to any of its employees who violate this policy. The Contractor will accept all liability arising from violation of this policy by his/her employees.

Anti-Drug and Alcohol Misuse Prevention Program: The services to be provided, either directly or indirectly, under contract for the MBTA to meet the criteria for drug and alcohol testing as mandated by the Federal Transit Administration (FTA).

Employees who perform safety-sensitive functions must be included in an employer substance abuse management program. The FTA has determined the safety-sensitive functions are performed by those who:

- Operate revenue service vehicles including when not in revenue service.
- Operate non-revenue service vehicles that require drivers to hold Commercial Drivers Licenses - CDLs.
- Dispatch or control revenue service vehicles.
- Maintain revenue service vehicles or equipment used in revenue service.
- Provide security and carry a firearm.

The definition of safety-sensitive includes supervisors who perform these functions. Supervisors of employees in the categories who do not themselves perform these functions are excluded.

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653, 654 and 40, and permit any authorized representatives of the United States Department of Transportation or its operating administrations, the Commonwealth of Massachusetts, or the MBTA, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653, 654 and 40 and review the testing process. The Contractor agrees

further to certify annually its compliance with Parts 653, 654 and 40 before March 15 of each contractual year and to submit the Management Information System (MIS) reports before March 15 of each year of the contract to Director of Occupational Health Services and Workmen's Compensation, MBTA, 120 Boylston Street – 6th Floor, Boston, MA 02116. To certify compliance the contractor shall use the Substance Abuse Certifications in the Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements, which are published annually in the Federal Register.

Bidders must submit, with their bid/proposal, the Certificate of Compliance with Anti-Drug and Alcohol Testing Programs.

Confidentiality: The information required to be submitted with proposal/bid shall be handled as confidential data and utilized on a "need to know" basis, to the extent permitted by law.

Labor Harmony: Prevailing Wage Rates Apply. The Contractor shall furnish labor that can work with all other elements of labor employed or to be employed at the MBTA. The Contractor agrees that all persons in its employment for the purpose of managing or working on the MBTA's premises shall conduct themselves at all times in an orderly and proper manner so as not to annoy or offend persons or MBTA employees using the premises. Moreover, the Contractor, at the request of the Authority will, for cause shown, remove from work on the Contract any employee who shall cause any annoyance or offense as aforesaid. The Contractor further covenants and agrees that, in the exercise of the rights and privileges granted, its employees or representatives will not deface or damage the property of the MBTA, deposit or scatter any rubbish, debris, waste, litter, or other matter in or about said premises. The Contractor agrees to assume liability for actions on the part of its employees.

11.24. Federal Requirements

11.24.1. Federal Transit Administration Required Clauses

Contractor shall ensure that all clauses applicable to its work, or service, performed for the MBTA pursuant to this contract are adhered to by the contractor and sub-contractors when applicable.

In the event of a conflict between these FTA required clauses and other Terms and Conditions with respect to this contract, there clauses shall govern.

(FTA Required Clauses follow)

It is the responsibility of the proposer/ bidder to ensure that all clauses applicable to the work or services related to this contract are adhered to by the Contractor and its Sub-contractors when applicable.

Contract Clause	Applicability to Type of Contract
Fly America Requirements	When Transportation Paid by FTA Funds
Buy America Requirements	Value > 150K for Construction, Goods, Rolling Stock
Charter Bus Requirements	Operational Service
School Bus Requirements	Operational Service
Cargo Preference Requirements	Equipment/Material/Commodities Transported by Ocean
Seismic Safety Requirements	New Construction/Additions

Contract Clause	Applicability to Type of Contract
Special Department of Labor (DOL) Equal Employment Clause	Value > \$10K for Construction
Energy Conservation Requirements	All
Clean Water Requirements	Value > \$100K
Bus Testing	Rolling Stock Acquisition
Pre-Award and Post Delivery Audit Requirements	Rolling Stock Acquisition
Lobbying	All
Access to Records and Reports	All
Federal Changes	All
Bonding Requirements	Construction > \$100K
Clean Air	Value > \$100K
Recycled Products	Value > \$10K In Fiscal Year
Davis-Bacon and Copeland Anti-Kickback Acts	Construction > \$2000
Contract Work Hours and Safety Standards Act	Construction >\$2000, Rolling Stock, Operational >\$2,500
No Government Obligation to Third Parties	All
Program Fraud and False or Fraudulent statements and Related Acts	All
Termination	Value > \$10K
Government-Wide Debarment and Suspension (Non-procurement)	Value > \$25K
Privacy Act	All
Civil Rights Requirements	All
ADA Access Requirements	All
Breaches and Dispute Resolution	Value > \$100K
Patent and Rights in Data	Research Projects Only
Transit Employee Protective Agreements	Transit Operations
Disadvantaged Business Enterprise (DBE)	All
Incorporation of FTA Terms	All
Drug and Alcohol Testing	Operational Service/Safety Sensitive
Metric Requirements	Sealed Bid Procurements, Rolling Stock, Construction

Contract Clause	Applicability to Type of Contract
Conformance with National ITS Architecture	Contracts and Solicitations for ITS projects only
Corridor Preservation	Right of Way Development
Veterans Employment	Capital Projects

11.24.2. Federal Changes

The Contractor shall, at all times, comply with all applicable FTA regulations, policies, procedures and directions, without limitation those listed directly or by reference in the Master Agreement (Form FTA MA (26) dated October, 2019) between the Purchaser and FTA, as they may be amended or promulgated from time to time during the term of the contract. The Contractor's failure to so comply shall constitute a material breach of contract.

11.24.3. Fly America Requirements

49 U.S.C. §40118 41 CFR Part 301-10.131 - 301-10.143

Applicability to Contracts: The Fly America requirements apply to the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S., when the FTA will participate in the costs of such air transportation. Transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the Federal DOT has determined meets the requirements of the Fly America Act.

Flow Down Requirements: The Fly America requirements flow down from MBTA to first tier contractors, who are responsible for ensuring that lower tier contractors and sub-contractors are in compliance.

Fly America: The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10.131 - 301-10.143, which provide that recipients and sub-recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

11.24.4. Buy America Requirements

49 U.S.C. 5323(j)

49 U.S.C. 5323(h)

49 CFR Part 661

The Bidder is to be governed by the latest provisions of the "Buy America" clause of the Surface Transportation Act of 1982, the Federal Mass Transportation Act of 1987 and Uniform Relocation Assistance Act of 1987 and execute the "Buy America" Certificate found in Section 8.19 of this Document. The separate requirements for rolling stock are set out in 5323(j)(2)(c) and 49 CFR part 661.11. The Bidder agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661 Section 165

Notwithstanding any other provisions of law, Secretary of Transportation shall not obligate any funds authorized to be appropriated by this Act or by any Act amended by the Act, or after the date of enactment of this Act, Title 23, United States Code, the Urban Mass Transportation Act of 1964, or the Surface Transportation Act of 1978 and 1982, and Federal Mass Transportation Act of 1987 and administered by the Department of Transportation, unless steel manufactured products used in such projects are produced in the United States.

The provisions of Subsection "a" of this Section shall not apply where the Secretary finds:

1. That their application would be inconsistent with the public interest.
2. That such material and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.
3. In the case of procurement of bus and other rolling stock (including train control, communication, and traction power equipment) under the Urban Mass Transportation Act of 1964, and the Federal Mass Transportation Act of 1987, that:
 - a. The cost of components and subcomponents which are produced in the United States is more than 60 per centum of the cost of all components of the vehicle or equipment described in this paragraph.
 - b. Final assembly of the vehicle or equipment described in this paragraph has taken place in the United States.
 - c. For purposes of this Section, calculating components' cost, labor cost involved in final assembly shall not be included in this calculation.
 - d. The Secretary of Transportation shall not impose any limitation or condition on assistance provided under this Act, the Urban Mass Transportation Act of 1987 or Title 23, United States Code, which restricts any State from imposing more stringent requirements than this section, the use of articles, materials, and supplies mined, produced or manufactured in foreign countries in projects carried out with such assistance or restricts any recipient of such assistance from complying with such State imposed requirements.
 - e. Section 401 of the Surface Transportation Acts of 1978 is repealed.
4. That the inclusion of domestic material will increase the cost of the overall project contract by more than 25 per centum in case of all projects including but not limited to the acquisition of rolling stock.

Flow Down Requirements: The Buy America requirements flow down from MBTA to first tier Contractor, who are responsible for ensuring that lower tier contractors and sub-contractors are in compliance.

Buy America: The Contractor agrees to comply with 49 U.S.C. 5323(j) as amended by MAP-21, 49 U.S.C. 5323(h), 49 CFR Part 661, and FAST Act (Pub. L. 114-94) which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7 and was amended by Section 3011 of the FAST Act (Pub. L. 114-94). Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a sixty percent

(60%) domestic content for FY16 & FY17; sixty-five percent (65%) domestic content for FY18 & FY19; and **seventy percent (70%) domestic content for FY20 & beyond**.

General waivers for small purchases do not apply to Contractor's equipment purchases when Contractor's contract value exceeds \$150,000 in value. Contractor must submit to MBTA the appropriate certification using a Buy America Certification Form with all bids on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as non-responsive. This requirement does not apply to lower tier sub-contractors.

11.24.5. Charter Bus Requirements

49 U.S.C. 5323(d) 49 CFR Part 604

Applicability to Contracts: The Charter Bus requirements apply to the following type of contract: Operational Service Contracts.

Flow Down Requirements: The Charter Bus requirements flow down from MBTA to first tier service Contractors.

Charter Service Operations: The contractor agrees to comply with 49 U.S.C. 5323(d) and 49 CFR Part 604, which provides that recipients and sub-recipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be "incidental," i.e., it must not interfere with or detract from the provision of mass transportation.

11.24.6. School Bus Requirements

49 U.S.C. 5323(F) 49 CFR Part 605

Applicability to Contracts: The School Bus requirements apply to the following type of contract: Operational Service Contracts.

Flow Down Requirements: The School Bus requirements flow down from MBTA to first tier service contractors.

School Bus Operations: Pursuant to 69 U.S.C. 5323(f) and 49 CFR Part 605, recipients and sub-recipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and sub-recipients may not use federally funded equipment, vehicles, or facilities.

11.24.7. Cargo Preference Requirements

46 U.S.C. 55305

Applicability to Contracts: The Cargo Preference requirements apply to all contracts involving equipment, materials, or commodities which may be transported by ocean vessels.

Flow Down Requirements: The Cargo Preference requirements apply to all subcontracts when the subcontract may be involved with the transport of equipment, material, or commodities by ocean vessel.

Cargo Preference: Use of United States-Flag Vessels - The contractor agrees:

1. To use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels;

2. To furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.)
3. To include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

Cargoes Procured, Furnished, or Financed by the United States Government:

1. **Definition:** In this section, the term "privately-owned commercial vessel of the United States" does not include a vessel that, after September 21, 1961, was built or rebuilt outside the United States or documented under the laws of a foreign country, until the vessel has been documented under the laws of the United States for at least three (3) years.
 2. **Minimum Tonnage:** When the United States Government procures, contracts for, or otherwise obtains for its own account, or furnishes to or for the account of a foreign country, organization, or persons without provision for reimbursement, any equipment, materials, or commodities, or provides financing in any way with Federal funds for the account of any persons unless otherwise exempted, within or without the United States, or advances funds or credits, or guarantees the convertibility of foreign currencies in connection with the furnishing or obtaining of the equipment, materials, or commodities, the appropriate agencies shall take steps necessary and practicable to ensure that at least fifty percent (50%) of the gross tonnage of the equipment, materials, or commodities (computed separately for dry bulk carriers, dry cargo liners, and tankers) which may be transported on ocean vessels is transported on privately-owned commercial vessels of the United States, to the extent those vessels are available at fair and reasonable rates for commercial vessels of the United States, in a manner that will ensure a fair and reasonable participation of commercial vessels of the United States in those cargoes by geographic areas.
 3. **Waivers:** The President, the Secretary of Defense, or Congress (by concurrent resolution or otherwise) may waive this section temporarily by:
 - a. Declaring the existence of an emergency justifying a waiver; and
 - b. Notifying the appropriate agencies of the waiver.
- 4. Programs of Other Agencies:**
- a. Each department or agency that has responsibility for a program under this section shall administer that program with respect to this section under regulations and guidance issued by the Secretary of Transportation. The Secretary, after consulting with the department or agency or organization or person involved, shall have the sole responsibility for determining if a program is subject to the requirements of this section.

- b. The Secretary:
 - i. Shall conduct an annual review of the administration of programs determined pursuant to paragraph (1) as subject to the requirements of this section;
 - ii. May direct agencies to require the transportation on United States-flagged vessels of cargo shipments not otherwise subject to this section in equivalent amounts to cargo determined to have been shipped on foreign carriers in violation of this section;
 - iii. May impose on any person that violates this section, or a regulation prescribed under this section, a civil penalty of not more than \$25,000 for each violation willfully and knowingly committed, with each day of a continuing violation following the date of shipment to be a separate violation; and
 - iv. May take other measures as appropriate under the Federal Acquisition Regulations issued pursuant to section 25(c)(1) 1 of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)(1) 2 or contract with respect to each violation.

5. Security of Government-Impelled Cargo:

- a. In order to ensure the safety of vessels and crewmembers transporting equipment, materials, or commodities under this section, the Secretary of Transportation shall direct each department or agency (except the Department of Defense), when responsible for the carriage of such equipment, materials, or commodities, to provide armed personnel aboard vessels of the United States carrying such equipment, materials, or commodities if the vessels are transiting high-risk waters.
- b. The Secretary of Transportation shall direct each department or agency responsible to provide armed personnel under paragraph (1) to reimburse, subject to the availability of appropriations, the owners or operators of applicable vessels for the cost of providing armed personnel.
- c. In this subsection, the term “high-risk waters” means waters so designated by the Commandant of the Coast Guard in the Port Security Advisory in effect on the date on which an applicable voyage begins.

(Pub. L. 109–304, §8(c), Oct. 6, 2006, 120 Stat. 1642; Pub. L. 110–417, div. C, title XXXV, §3511(a), (b), Oct. 14, 2008, 122 Stat. 4769; Pub. L. 112–213, title V, §503, Dec. 20, 2012, 126 Stat. 1575.)

11.24.8. Seismic Safety Requirements

42 U.S.C. 7701 et seq.

49 CFR Part 41

Applicability to Contracts: The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings.

Flow Down Requirements: The Seismic Safety requirements flow down from MBTA to first tier contractors to assure compliance, with the applicable building standards for Seismic Safety, including the work performed by all sub-contractors.

Seismic Safety: The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a sub-contractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project. The contractor will facilitate and follow Executive Order No. 12699, "Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction," 42 U.S.C. 7704 note, except as the Federal Government determines otherwise in writing.

11.24.9. Special DOL Equal Employment Clause

41 CFR Part 60

See Section 11.24.26 – Civil Rights Requirements.

11.24.10. Energy Conservation Requirements

42 U.S.C. 6321 et seq. 49 CFR Part 622

Applicability to Contracts: The Energy Conservation requirements are applicable to all contracts.

Flow Down Requirements: The Energy Conservation requirements extend to all third party contractors and their contracts at every tier and, sub-recipients and their sub-agreements at every tier.

Energy Conservation: The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act. The contractor agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA funds required under FTA regulations, "Requirements for Energy Assessments," 49 CFR part 622, subpart C.

11.24.11. Clean Water Requirements

33 U.S.C. 1251 - 1377

Applicability to Contracts: The Clean Water requirements apply to each contract and subcontract which exceeds \$100,000.

Flow Down Requirements: The Clean Water Act requirements flow down to MBTA third party contractors and their contracts at every tier, and sub-recipients and their sub-agreements at every tier.

Clean Water:

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Water Act, as amended, 33 U.S.C. 1251 – 1377 et seq.

2. The contractor agrees to report each violation to MBTA and understands and agrees that MBTA will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office in compliance with the notice of violating facility provisions in section 508 of the Clean Water Act, as amended, 33 U.S.C. 1368
3. The contractor agrees to protect underground sources of drinking water in compliance with the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300f – 300j-6.

The contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

11.24.12. Bus Testing

49 U.S.C. 5318(e)

49 U.S.C. 5323(c)

49 CFR Part 665

Applicability to Contracts: The Bus Testing requirements pertain only to the acquisition of Rolling Stock/Turnkey.

Flow Down Requirements: The Bus Testing requirements should not flow down, except to the turnkey contractor as stated in the most current FTA Master Agreement.

Bus Testing: The Contractor [Manufacturer] agrees to comply with 49 U.S.C. 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:

- i. A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.
- ii. A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
- iii. If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
- iv. If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

11.24.13. Pre-Award and Post-Delivery Audits Requirements

49 U.S.C. 5323

49 C.F.R. 661.12 49 CFR Part 663

Applicability to Contracts: These requirements apply only to the acquisition of Rolling Stock/Turnkey.

Flow Down Requirements: These requirements should not flow down, except to the turnkey contractor as stated in Master Agreement.

Buy America certification is mandated under FTA regulation, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 C.F.R. 663.13.

A Buy America certification under this part shall be issued in addition to any certification which may be required by part 661 of this title. Nothing in this part precludes FTA from conducting a Buy America investigation under part 661 of this title "Pre-Award and Post-Delivery Audit Requirements." The Contractor agrees to comply with "Buy America Requirements--Surface Transportation Assistance Act of 1982, as amended," 49 C.F.R. 661.12, but has been modified to include FTA's Buy America requirements codified at 49 U.S.C. A 5323(j).

In accordance with the above, the Federal Transportation Administration; as delegated by the Secretary of Transportation, has issued regulations requiring pre-award and post-delivery audits when federal financial assistance is utilized in the purchase of rolling stock when funds have been made available under the Urban Mass Transportation Act as amended.

A. General

1. Definitions as used in this herein:
 - a. Pre-award means that period in the procurement process before the recipient enters into a formal contract with the supplier.
 - b. Post-delivery means the time period in the procurement process from when the rolling stock is delivered to the recipient until title to the rolling stock is transferred to the recipient or the rolling stock is put into revenue service, whichever is first.
 - c. Rolling stock means buses, vans, cars, railcars, locomotives, trolley cars and buses, ferry boats, and vehicles used for guideways and incline planes.
 - d. Audit means a review resulting in a report containing the necessary certifications of compliance with Buy America Standards, purchaser's requirements specifications, and, where appropriate, a manufacturer's certification of compliance with or inapplicability of the Federal Motor Vehicle Safety Standards, required by Section 319 of STURAA and this part.
2. Audit Limitations
 - a. Applicable Buy America requirements (Section 165 of the Surface Transportation Assistance Act of 1982, as amended); and
 - b. Solicitation specification requirements of the recipient.
 - c. An audit under this part includes, where appropriate, a copy of a manufacturer's self-certification information that the vehicle complies with Federal Motor Vehicle Safety Standard or a certification that such standards are inapplicable.
 - d. An audit conducted under this part is separate from the single annual audit requirement established by Office of Management and Budget Circular A-128, "Audits of State and Local Governments," dated May 16, 1985.

B. Pre-Award Audit

1. Pre-Award audit must be completed before a formal contract for the procurement of rolling stock may be issued.
2. The elements of this pre-award audit include the following certification to be maintained on file by the purchaser.

a. Buy America Certification

- (i) There is a letter from the FTA which grants a waiver to the rolling stock to be purchased from the Buy America requirements under Section 165(b)(1), (b)(2), or (b)(4) of the Surface Transportation Assistance Act of 1982 as amended; or
- (ii) The recipient is satisfied that the rolling stock to be purchased meets the requirements of Section 165(a) of (b)(3) of the Surface Transportation Assistance Act of 1982, as amended, after having reviewed itself or through an audit prepared by someone other than the manufacturer or its agent documentation provided by the manufacturer which lists:
 - (a) Component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and
 - (b) The location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

b. Purchaser's Requirements Certification

- (i) The rolling stock the recipient is contracting for the same product described in the purchaser's solicitation specification; and
- (ii) The Bidder is a responsible manufacturer with the capability to produce a vehicle that meets the recipient's specification set forth in the recipient's solicitation.

c. Federal Motor Vehicle Safety Standards (FMVSS):

(i) Certification of Compliance with Federal Motor Vehicle Safety Standards.

If a vehicle purchased under this part is subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in part 571 of this title, the purchaser shall keep on file its certification that it received, both at the pre-award and post-delivery stage, a copy of the manufacturer's self-certification information that the vehicle complies with relevant Federal Motor Vehicle Safety Standards.

(ii) Certification that Federal Motor Vehicle Standards do not apply.

(a) Except for rolling stock subject to paragraph (b) of this section, if a vehicle purchased under this part is not subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in part 571 of this time, the recipient shall keep on file its certification that it received a statement to that effect from the manufacturer.

(b) This subpart shall not apply to rolling stock that is not a motor vehicle.

C. Post-Delivery Audits

1. A post-delivery audit of FTA funded rolling stock procurement must be complete before title is transferred to the purchaser.
2. A post-delivery audit under this section includes:
 - a. Post-delivery Buy America Certificate which the purchaser keeps on file, the following:
 - (i) There is a letter from UMTA (FTA) which grants a waiver to the rolling stock received from the Buy America requirements under Section 165(b)(1), or (b)(4) of the Surface Transportation Assistance Act of 1982, as amended; or
 - (ii) The recipient is satisfied that the rolling stock received meets the requirements of Section 165(a) or (b)(3) of the Surface Transportation Assistance Act of 1982, as amended, after having reviewed itself or by means of an audit prepared by someone other than the manufacturer or its agent documentation provided by the manufacturer which lists:
 - (a) Components and subcomponent parts of the rolling stock identified by manufacturer of the parts, their country of origin and costs; and
 - (b) The actual location of the final assembly point for rolling stock including a description of the activities which took place at the final assembly point and the cost of the final assembly.
 - b. Post-Delivery Purchaser's Requirements Certification
For purpose of this part, a post-delivery purchaser's requirements certification is a certification that the recipient keeps on file that:
 - (i) Except for procurement covered under paragraph (c) in this Section, a resident inspector (other than an agent or employee of the manufacturer) was at the manufacturing site throughout the period of manufacture or the rolling stock to be purchased and monitored and completed a report on the manufacture of such rolling stock. Such a report, at a minimum, shall:
 - (a) Provide accurate records of all vehicle overhaul activities; and
 - (b) Address how the overhaul and operation of the vehicles fulfills the contract specifications.
 - (ii) After reviewing the report required under paragraph (a) of this Section, and visually inspecting and road testing the delivered vehicles, the vehicles meet contract specifications.
 - c. Post-Delivery Federal Motor Vehicle Safety Standards (if applicable)
 3. If the purchaser cannot complete a post-delivery audit because it or its agent cannot certify Buy America compliance or that the rolling stock meets the purchaser's requirements specified in the contract, the rolling stock may be rejected and final acceptance by the

recipient will not be required. The recipient may exercise any legal rights it has under the contract or at law.

Be advised that this provision does not preclude the recipient and manufacturer from agreeing to a conditional acceptance of rolling stock pending manufacturer's correction of deviations within a reasonable period of time.

NOTE: For this Section only, the following words have been used interchangeable to mean the same:

Recipient, Purchaser = Authority

Manufacturer, Bidder, Car builder = Contractor

11.24.14. Lobbying

31 U.S.C. 1352

49 CFR Part 19

49 CFR Part 20

Applicability to Contracts: The Lobbying requirements apply to Construction/Architectural and Engineering/Acquisition of Rolling Stock/Professional Service Contract/Operational Service Contract/Turnkey contracts.

Flow Down Requirements: The Lobbying requirements mandate the maximum flow down pursuant to Byrd Anti-Lobbying Amendment 31 U.S.C. §1352(b)(5) and 49 C.F.R. Part 19, Appendix A, Section 7.

Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, P.L. 104-65 [to be codified at 2 U.S.C. § 1601, et seq.] - Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of a Federal agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier certifies to the tier above that it will not and has not taken any action involving the Project or the Underlying Agreement for the Project, including any award, extension, or modification. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to MBTA.

11.24.15. Access to Records and Reports

49 U.S.C. 5325

18 CFR 18.36(i)

49 CFR 633.17

Applicability to Contracts: Reference Chart "Requirements for Access to Records and Reports by Type of Contracts," Item 6 of this Section.

Flow Down Requirements: FTA does not require the inclusion of these requirements in subcontracts.

Access to Records: The following access to records requirements apply to this Contract:

1. The Contractor agrees to provide MBTA, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract

for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where MBTA or a sub-grantee of MBTA in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a) 1) through other than competitive bidding, the Contractor shall make available records related to the contract to MBTA, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.
3. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
4. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three (3) years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until MBTA, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i) (11).
5. FTA does not require the inclusion of these requirements in subcontracts.
6. **Requirements for Access to Records and Reports by Types of Contract**

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Professional Rolling Stock	Professional Services
<u>Non-State Grantees</u> a) Contracts below SAT (\$100,000)	Yes ¹	Those imposed on non-state	Yes	Yes	Yes	Yes
b) Contracts above \$100,000 / Capital Projects	Yes ¹	Grantee pass thru to Contractor	Yes	Yes	Yes	Yes

Sources of Authority: 1 18 CFR 18.36 (i)

11.24.16. Federal Changes

49 CFR Part 18

Applicability to Contracts: The Federal Changes requirement applies to all contracts.

Flow Down Requirements: The Federal Changes requirement flows down appropriately to each applicable changed requirement.

Federal Changes: Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between MBTA and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

11.24.17. Clean Air

42 U.S.C. 7401 – 7601(q)

40 CFR 15.61

49 CFR Part 18

Applicability to Contracts: The Clean Air requirements apply to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.

Flow Down Requirements: The Clean Air requirements flow down to all subcontracts which exceed \$100,000.

Clean Air:

1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 – 7601(q) et seq . The Contractor agrees to report each violation to MBTA and understands and agrees that MBTA, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
2. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

11.24.18. Recycled Products

42 U.S.C. 6962

40 CFR Part 247

Executive Order 12873

Applicability to Contracts: The Recycled Products requirements apply to all contracts for items designated by the EPA, when the Contractor procures \$10,000 or more of one (1) of these items during the fiscal year, or has procured \$10,000 or more of such items in the previous fiscal year, using Federal funds.

Flow Down Requirements: These requirements flow down to all contractor and sub-contractor tiers.

Recovered Materials: The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247. The contractor agrees to comply with the U.S. Environmental Protection Agency (US EPA), "Comprehensive Procurement Guideline for Products Containing Recovered Materials," 40 CFR part 247.

11.24.19. Davis-Bacon and Copeland Anti-Kickbacks Acts

49 U.S.C. 5333

40 U.S.C. 3141 – 3144

40 U.S.C. 3146 – 3147

18 U.S.C. 874**40 U.S.C. 3145**

Applicability to Contracts: The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, et seq. and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that “at least partly are financed by a loan or grant from the Federal Government.” 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i) (5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). ‘Construction,’ for purposes of the Acts, includes “actual construction, alteration and/or repair, including painting and decorating.” 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (see 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.

Flow Down Requirements: Applies to third party contractors and sub-contractors

1. Minimum Wages:

- (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than Monthly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one (1) classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its sub-contractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.
- (ii)
 - (A) The Contracting Officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
 - (1) Except with respect to helpers as defined in 29 CFR 5.2(n) (4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (2) The classification is utilized in the area by the construction industry; and
 - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

- (4) With respect to helpers as defined in 29 CFR 5.2(n) (4), such a classification prevails in the area in which the work is performed.
- (B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and shall advise the Contracting Officer or will notify the Contracting Officer within the thirty (30) day period that additional time is necessary.
- (C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within thirty (30) days of receipt and shall advise the Contracting Officer or will notify the Contracting Officer within the thirty (30) day period that additional time is necessary.
- (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs ((1)(ii) (A), (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.
- (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
2. **Withholding:** MBTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, MBTA may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
3. **Payrolls and basic records.**

- (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b) (2) (B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.
- (ii)
 - (A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to MBTA for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a) (3) (i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.
 - (B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or sub-contractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
 - (1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a) (3) (i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
 - (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
 - (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
 - (C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.
 - (D) The falsification of any of the above certifications may subject the contractor or sub-contractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or sub-contractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or sub-contractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees -

- (i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or Sub-contractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (ii) **Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage

determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (iii) **Equal Employment Opportunity** - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.
- 5. **Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.
- 6. **Subcontracts.** The contractor or sub-contractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the sub-contractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier sub-contractor with all the contract clauses in 29 CFR 5.5.
- 7. **Contract termination: debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a sub-contractor as provided in 29 CFR 5.12.
- 8. **Compliance with Davis-Bacon and Related Act requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.
- 9. **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its sub-contractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
- 10. **Certification of eligibility.**
 - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or Contractor who has an interest in the contractor's Contractor is a person or Contractor ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - (ii) No part of this contract shall be subcontracted to any person or Contractor ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
 - (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) Contract Work Hours and Safety Standards Act. The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by §5.5(a) or §4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. **Overtime requirements.** No contractor or sub-contractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1.5) times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.
2. **Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any sub-contractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and sub-contractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
3. **Withholding for unpaid wages and liquidated damages.** The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or sub-contractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or sub-contractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
4. **Subcontracts.** The contractor or sub-contractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the sub-contractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any sub-contractor or lower tier sub-contractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in §5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the contractor or sub-contractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or sub-contractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or sub-contractor will permit such representatives to interview employees during working hours on the job.

The information collection, recordkeeping, and reporting requirements contained in the following paragraphs of this section were approved by the Office of Management and Budget:

OMB Control Number

- (a)(1)(ii)(B) 1215-0140
- (a)(1)(ii)(C) 1215-0140
- (a)(1)(iv) 1215-0140
- (a)(3)(i) 1215-0140, 1215-0017
- (a)(3)(ii)(A) 1215-0149
- (c) 1215-0140,
1215-0017

[48 FR 19540, Apr. 29, 1983, as amended at 51 FR 12265, Apr. 9, 1986; 55 FR 50150, Dec. 4, 1990; 57 FR 28776, June 26, 1992; 58 FR 58955, Nov. 5, 1993; 61 FR 40716, Aug. 5, 1996; 65 FR 69693, Nov. 20, 2000; 73 FR 77511, Dec. 19, 2008]

Effective Date Note: At 58 FR 58955, Nov. 5, 1993, §5.5 was amended by suspending paragraph (a)(1)(ii) indefinitely.

11.24.20. Contract Work Hours and Safety Standards Act

29 CFR Part 5**40 U.S.C. 3701 et seq.****40 U.S.C. 3702**

Applicability to Contracts: The Contract Work Hours and Safety Standards Act is codified at 40 USC 3701, et seq. The Act applies to grantee contracts and subcontracts “financed at least in part by loans or grants from … the [Federal] Government.” 40 USC 3701(b) (1) (B) (iii) and (b) (2), 29 CFR 5.2(h), 49 CFR 18.36(i) (6).

The Act applies to construction contracts and, in very limited circumstances, non-construction projects that employ “laborers or mechanics on a public work” with a value greater than \$100,000.

Flow Down Requirements: Applies to third party contractors and sub-contractors.

- a. **Overtime Requirements:** No contractor or sub-contractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1.5) times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.
- b. **Violation; Liability for Unpaid Wages; Liquidated Damages:** In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any sub-contractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and sub-contractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- c. **Withholding for Unpaid Wages and Liquidated Damages:** MBTA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause

to be withheld, from any moneys payable on account of work performed by the contractor or sub-contractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or sub-contractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

Subcontracts: The Contractor or sub-contractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the sub-contractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any sub-contractor or lower tier sub-contractor with the clauses set forth in paragraphs (1) through (4) of this section.

11.24.21. No Government Obligation to Third Parties

Applicability to Contracts: Applicable to all contracts.

Flow Down Requirements: This concept should flow down to all levels to clarify, to all parties to the contract, that the Federal Government does not have contractual liability to third parties, absent specific written consent.

No Obligation by the Federal Government.

1. MBTA and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to MBTA, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
2. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the sub-contractor who will be subject to its provisions.

11.24.22. Program Fraud and False or Fraudulent Statements and Related Acts

31 U.S.C. 3801 et seq.

49 CFR Part 31

18 U.S.C. 1001

49 U.S.C. 5307

Applicability to Contracts: These requirements are applicable to all contracts.

Flow Down Requirements: These requirements flow down to contractors and sub-contractors who make, present, or submit covered claims and statements.

1. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies the truthfulness and accuracy of any statement it has made, it makes, it may

make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

2. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
3. The Contractor agrees to include the above two (2) clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the sub-contractor who will be subject to the provisions.

11.24.23. Termination & Cancellation

49 CFR Part 18

FTA Circular 4220.1F

For Termination, see Section 11.9.

11.24.24. Government-Wide Debarment and Suspension (Non-Procurement)

49 CFR 18

2 CFR 1200

2 CFR 180

Executive Orders 12549 and 12689

31 U.S.C. 6101

Background and Applicability: In addition to the contracts covered under 2 CFR 180.220(b) of the OMB guidance, this part applies to any contract, regardless of tier, that is awarded by a contractor, sub-contractor, supplier, Contractor, or its agent or representative in any transaction, if the contract is to be funded or provided by the Department of Transportation under a covered non-procurement transaction and the amount of the contract is expected to equal or exceed \$25,000. This extends the coverage of the Department of Transportation non-procurement suspension and debarment requirements to all lower tiers of subcontracts under covered non-procurement transactions, as permitted under the OMB guidance at 2 CFR 180.220(c) (see optional lower-tier coverage in the figure in the appendix to 2 CFR part 180). This government-wide regulation implements Executive Order 12549, Debarment and Suspension, Executive Order 12689, Debarment and Suspension, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327).

These provisions apply to all MBTA contracts and subcontracts at any level expected to equal or exceed \$25,000 as well as any contract or subcontract (at any level) for federally required auditing services. These are contracts and subcontracts referred to in the regulation as “covered transactions.”

Grantees, contractors, and sub-contractors (at any level) that enter into covered transactions are required to verify that the entity (as well as its principals and affiliates) they propose to contract or subcontract with is not excluded or disqualified. They do this by (a) Checking the System for Award Management (SAM), (b) Collecting a certification from that person, or (c) Adding a clause or condition to the contract or subcontract.

Grantees, contractors, and sub-contractors who enter into covered transactions also must require the entities they contract with to comply 2 CFR 180 and include this requirement in their own subsequent covered transactions (i.e., the requirement flows down to subcontracts at all levels).

Flow Down Requirements: These requirements flow down to contractors and sub-contractors at all levels.

Suspension and Debarment: This contract is a covered transaction for purposes of 49 CFR Part 18. As such, the contractor is required to verify that none of the contractor, its principals, are excluded or disqualified as defined under Executive Orders Nos. 12549 and 12689.

The contractor is required to comply with 2 CFR 1200, and must include the requirement to comply with 2 CFR 1200, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its Proposal, the Bidder certifies as follows:

The certification in this clause is a material representation of fact relied upon by MBTA. If it is later determined that the Firm knowingly rendered an erroneous certification, in addition to remedies available to MBTA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Firm agrees to comply with the requirements 2 CFR 180 while this offer is valid and throughout the period of any contract that may arise from this offer. The Firm further agrees to include a provision requiring such compliance in its lower tier covered transactions.

The Contractor shall meet the requirements of 49 C.F.R. Part 29. 49 C.F.R. Part 29 implements Executive Order 12549, Debarment and Suspension, Executive Order 12689, Debarment and Suspension, and 31 U.S.C. 6101 note (Section 2455, Public Law 103-355, 108 Stat. 3327). The provisions of Part 29 apply to all contracts and subcontracts at any level expected to equal or exceed \$24,000. This represents a change from prior practice in that the dollar threshold for application of these rules has been lowered from \$100,000 to \$24,000. As such, the Contractor is required to verify that none of the Contractor (i.e., entity), its principals, as defined at 49 C.F.R. 29.995, or affiliates, as defined at 49 CFR 29.905, or subcontractors with which it proposes to contract or subcontract, are excluded or disqualified as defined at 49 C.F.R. 29.940 and 29.945. Contractors can do this by (a) checking the Excluded Parties List System in the System for Award Management System (SAM) , (b) collecting a certification, or (c) adding a clause or condition to the relevant contract or subcontract.

11.24.25. Privacy Act

5 U.S.C. 552

Applicability to Contracts: When MBTA maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

Flow Down Requirements: The Federal Privacy Act requirements flow down to each third party contractor and their contracts at every tier.

Contracts Involving Federal Privacy Act Requirements: The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

11.24.26. Civil Rights Requirements

29 U.S.C. § 623, 42 U.S.C. § 2000 **42 U.S.C. § 6102, 42 U.S.C. § 12112** **42 U.S.C. § 12132, 49 U.S.C. § 5332** **29 CFR Part 1630, 41 CFR Parts 60 et seq.**

The MBTA is an Equal Opportunity Employer. As such, the MBTA agrees to comply with all applicable civil rights statutes and implementing regulations issued by the FTA. Apart from inconsistent requirements imposed by Federal statutes or regulations, the MBTA agrees to comply with the requirements of 49 U.S.C. § 5323(h)(2) by not using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

1. The Contractor will be required to comply with these applicable civil rights, nondiscrimination, and equal employment opportunity laws and regulations:
 - a. 49 CFR Part 21, 49 CFR Part 25, 49 CFR Part 26, 49 CFR Part 27, 49 CFR Part 37, 49 CFR Part 38, 49 CFR Part 39, 20 U.S.C. §§ 1681 – 1683 and 1685 – 1687, 21 U.S.C. § 1101, 29 U.S.C. § 794, et seq., 42 U.S.C. § 290dd – 290dd-2, 42 U.S.C. § 2000d, 42 U.S.C. § 3601, 42 U.S.C. § 4541, 42 U.S.C. § 6101 – 6107, 42 U.S.C. § 12101, et seq., 42 U.S.C. § 12132, 49 U.S.C. § 5307 (c)(1)(D)(ii), 49 U.S.C. § 5332,
 - b. 29 CFR Part 1630, 41 CFR Part 60, 29 U.S.C. § 623, 42 U.S.C. § 2000e, 42 U.S.C. § 12112,
 - c. 49 U.S.C. § 5325 (k).
 - d. Fixing America's Surface Transportation (FAST) Act, Public Law No: 114-94, as may be amended.
2. The Civil Rights requirements flow down to all third party sub-contractors and their subcontracts at every tier.
3. The following requirements apply to a contract awarded as a result of this solicitation:
 - a. **Nondiscrimination** - In accordance with U.S. Department of Transportation (DOT), Federal, the Rehabilitation Act of 1973, as amended, 20 U.S.C. §§ 1681 – 1683 and 1685 – 1687, 21 U.S.C. § 1101, 29 U.S.C. § 794, Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 290dd – 290dd-

2, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 3601, 42 U.S.C. § 4541, 42 U.S.C. § 6102, 42 U.S.C. § 6101 – 6107, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, 42 U.S.C. § 12132, Federal transit law 49 U.S.C. § 5307 (c)(1)(D)(ii), Federal transit law 49 U.S.C. § 5332, FTA Circular 4702.1, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients.”, DOT Order to Address Environmental Justice in Minority Populations and Low-Income Populations, Executive Order No. 13166 and DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficiency (70 FR 74087, Dec. 14, 2005), the Unruh Civil Rights Act, the Contractor agrees that it will comply with the identified Federal laws and regulations, pertaining to MBTA programs and activities, to ensure that no person will be denied the benefits of, or otherwise be subjected to, discrimination (particularly in the level and quality of transportation services and transportation-related benefits) on the bases of race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, gender expression, age, marital status, genetic information, medical condition, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations, other implementing requirements that DOT or FTA may issue, and any other applicable Federal statutes and/or regulations that may be signed into law or promulgated.

- b. **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to a contract awarded as a result of this solicitation:

- i. **Race, Color, Ancestry, Marital Status, Medical Condition, Genetic Information, Religion, National Origin, Sex, Sexual Orientation, Gender Identity, Gender Expression** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, 49 U.S.C. § 5332, FTA Circular 4704.1, “Equal Employment Program Guidelines for Grant Recipients”, and , the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, including "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60, et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), Fair Employment and Housing Act, and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect activities undertaken in the course of the Project. Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, ancestry, religion, marital status, medical condition, genetic information, national origin, sex, sexual orientation, gender identity, gender expression, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements that DOT or FTA may issue, and any other applicable Federal statutes that may be signed into law or Federal regulations that may be promulgated.

- ii. **Sex** – The Contractor agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681, and 49 CFR part 25. In addition, the Contractor agrees to comply with any implementing requirements that DOT or FTA may issue.
 - iii. **Age** - The Contractor agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6101, 45 CFR part 90, the Age Discrimination in Employment Act, 29 U.S.C. §§ 621-634, and Equal Employment Opportunity Commission (EEOC) implementing regulations 29 CFR part 1625. In addition, the Contractor agrees to comply with any implementing requirements that DOT or FTA may issue.
 - iv. **Disabilities** - The Contractor agrees to comply with Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794(d), 36 CFR part 1194, the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101, 49 CFR parts 27, 37, 38, and 39, and FTA Circular 4710.1, “Americans with Disabilities Act: Guidance”. In addition, the Contractor agrees to comply with any implementing requirements that DOT or FTA may issue.
4. The Contractor agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

11.24.27. ADA Access Requirements

49 U.S.C. § 5301, 29 U.S.C. § 794, 42 U.S.C. § 12101

Applicability to Contracts: The Contractor shall comply with 49 USC 5301(d), stating Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation services and facilities and that special efforts shall be made in planning and designing those services and facilities to implement that policy. Contractor shall also comply with all applicable requirements of Sec. 504 of the Rehabilitation Act (1973), as amended, 29 USC 794, which prohibits discrimination on the basis of handicaps, and the Americans with Disabilities Act of 1990 (ADA), as amended, 42 USC 12101 et seq., which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments thereto.

Contractor shall also comply with the following regulations, as applicable, and any amendments thereto:

1. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
2. U.S. DOT regulations, "nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
3. U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 49 C.F.R. Part 38;

4. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
5. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
6. General Services Administration regulations, "Accommodations for the Physically Handicapped,: 41 C.F.R. Subpart 101-19;
7. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
8. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F; and
9. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609.

11.24.28. Breaches and Dispute Resolution

49 CFR Part 18 FTA Circular 4220.1F

Applicability to Contracts: All contracts in excess of \$100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. This may include provisions for bonding, penalties for late or inadequate performance, retained earnings, liquidated damages or other appropriate measures.

Flow Down Requirements: The Breaches and Dispute Resolutions requirements flow down to all tiers.

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of MBTA. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the MBTA. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of MBTA shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by MBTA, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the MBTA and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the MBTA is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by MBTA or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such

action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

11.24.29. Patent and Rights in Data

37 CFR Part 401 49

CFR Parts 18 and 19

Applicability to Contracts: Patent and rights in data requirements for federally assisted projects ONLY apply to research projects in which FTA finances the purpose of the grant is to finance the development of a product or information. These patent and data rights requirements do not apply to capital projects or operating projects, even though a small portion of the sales price may cover the cost of product development or writing the user's manual.

Flow Down Requirements: The Patent and Rights in Data requirements apply to all contractors and their contracts at every tier.

CONTRACTS INVOLVING EXPERIMENTAL, DEVELOPMENTAL, OR RESEARCH WORK

(A) **Rights in Data** - The following requirements apply to each contract involving experimental, developmental or research work:

1. The term "subject data" used in this clause means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the contract. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.
2. The following restrictions apply to all subject data first produced in the performance of the contract to which this Attachment has been added:
 - a. Except for its own internal use, MBTA or Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may MBTA or Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.
 - b. In accordance with 49 C.F.R. § 18.34 and 49 C.F.R. § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for "Federal Government purposes," any subject data or copyright described in subsections (2)(b)1 and (2)(b)2 of this clause below. As used in the previous sentence, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party.
 1. Any subject data developed under that contract, whether or not a copyright has been obtained; and
 2. Any rights of copyright purchased by MBTA or Contractor using Federal assistance in whole or in part provided by FTA.

- c. When FTA awards Federal assistance for experimental, developmental, or research work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in that work. Therefore, unless FTA determines otherwise, MBTA and the Contractor performing experimental, developmental, or research work required by the underlying contract to which this Attachment is added agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of that contract, or a copy of the subject data first produced under the contract for which a copyright has not been obtained. If the experimental, developmental, or research work, which is the subject of the underlying contract, is not completed for any reason whatsoever, all data developed under that contract shall become subject data as defined in subsection (a) of this clause and shall be delivered as the Federal Government may direct. This subsection (c), however, does not apply to adaptations of automatic data processing equipment or programs for MBTA or Contractor's use whose costs are financed in whole or in part with Federal assistance provided by FTA for transportation capital projects.
 - d. Unless prohibited by state law, upon request by the Federal Government, MBTA and the Contractor agree to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by MBTA or Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under that contract. Neither MBTA nor the Contractor shall be required to indemnify the Federal Government for any such liability arising out of the wrongful act of any employee, official, or agents of the Federal Government.
 - e. Nothing contained in this clause on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
 - f. Data developed by MBTA or Contractor and financed entirely without using Federal assistance provided by the Federal Government that has been incorporated into work required by the underlying contract to which this Attachment has been added is exempt from the requirements of subsections (b), (c), and (d) of this clause, provided that MBTA or Contractor identifies that data in writing at the time of delivery of the contract work.
3. Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
 4. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), MBTA and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Contractors under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.
- (B) **Patent Rights** - The following requirements apply to each contract involving experimental, developmental, or research work:
1. General - If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under the contract to which this Attachment has been added, and that

- invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, MBTA and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the party at a higher tier until FTA is ultimately notified.
2. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), MBTA and the Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Contractors Under" Government Grants, Contracts and Cooperative Agreements,: 37 C.F.R. Part 401.
 3. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

11.24.30. Transit Employee Protective Agreements

49 U.S.C. § 5310, § 5311, and § 5333 29 CFR Part 215

Applicability to Contracts: The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator. (Because transit operations involve many activities apart from directly driving or operating transit vehicles, FTA determines which activities constitute transit "operations" for purposes of this clause.)

Flow Down Requirements: These provisions are applicable to all contracts and subcontracts at every tier.

- a. General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to MBTA's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for non-urbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.
- b. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body sub-recipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any

amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

- c. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Non-urbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Non-urbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

11.24.31. Incorporation of Federal Transit Administration (FTA) Terms

FTA Circular 4220.1F

Applicability to Contracts: The incorporation of FTA terms applies to all contracts and subcontracts at every tier.

Flow Down Requirements: The incorporation of FTA terms has unlimited flow down.

Incorporation of Federal Transit Administration (FTA) Terms: The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in the most current FTA Circular 4220, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any MBTA requests which would cause MBTA to be in violation of the FTA terms and conditions.

11.24.32. Drug and Alcohol Testing

49 U.S.C. §5331

49 CFR Part 655

49 CFR Part 382

Applicability to Contracts: The Drug and Alcohol testing provisions apply to Operational Service Contracts.

Flow Down Requirements: Anyone who performs a safety-sensitive function for the recipient or sub-recipient is required to comply with 49 CFR 655 as amended by MAP-21, with certain exceptions for contracts involving maintenance services. Maintenance CONSULTANTs for non-urbanized area formula program grantees are not subject to the rules. Also, the rules do not apply to maintenance sub-contractors.

Drug and Alcohol Testing: The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655, produce any documentation necessary to establish its compliance with Part 655, and permit any authorized representative of the United States Department of Transportation or its operating administrations, or MBTA, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Part 655 and review the testing process. The contractor agrees further to certify annually its compliance with Part 655 before June 30 and to submit the Management Information System (MIS) reports before January 15 to MBTA. To certify compliance the Contractor shall use the "Substance Abuse Certifications" in the "Annual

List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

11.24.33. Metric Requirements

15 U.S.C. §§205

2007-Pub. L. 110-69

As required by U.S. DOT or FTA, MBTA agrees to use the metric system of measurement in its Project activities, pursuant to the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. §§ 205a et seq.; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. § 205a note; and other U.S. DOT or FTA regulations, guidelines, and policies. To the extent practicable and feasible, the MBTA agrees to accept products and services with dimensions expressed in the metric system of measurement.

11.24.34. National Intelligent Transportation Systems (ITS) Architecture and Standards

23 U.S.C. Section 517(d)

23 U.S.C. §502

Intelligent transportation system (ITS) property and services must comply with the National ITS Architecture and Standards to the extent required by 23 U.S.C. Section 517(d) and FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 FR 1455 et seq., January 8, 2001, and later published policies or implementing directives FTA may issue. Consequently, third party contracts involving ITS are likely to require provisions to ensure compliance with Federal requirements.

11.24.35. Corridor Preservation

49 U.S.C. 5323(q)

The Recipient agrees not to develop right-of way acquired under 49 U.S.C. § 5323(q), as amended by MAP-21, in anticipation of its Project until all required environmental reviews for that Project have been completed.

11.24.36. Veterans Employment

49 U.S.C. 5325 (k)

Veterans Employment. As provided by 49 U.S.C. § 5325(k):

To the extent practicable, Contractor agrees that it:

1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, and

2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee, and

Contractor also assures that its sub-contractor:

1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, to the extent practicable, and
2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

11.24.37. Air Quality / EPA and Fuel Economy

Applicable requirements of EPA regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act," 40 C.F.R. Part 51, Subpart T; and "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93.

The Contractor should be aware that the following EPA regulations, among others, may apply to its Project: "Control of Air Pollution from Motor Vehicles and Motor Vehicle Engines," 40 C.F.R. Part 85; "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures," 40 C.F.R. Part 86; and "Fuel Economy of Motor Vehicles," 40 C.F.R. Part 6.00.

11.24.38. Federal Tax Liability and Recent Felony Convictions

Consolidated Appropriations Act 2019, Pub. L. 116-6, div. D, Title VII, Sections 744-745

Applicability to Contracts:

The requirements apply to any Third-Party Agreement with any private corporation, partnership, trust, joint-stock company, sole proprietorship, or other business association ("Third-Party Participant").

The Third-Party Participant must provide a certification that the Third-Party Participant:

1. Does not have any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and
2. Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

MBTA shall not enter into any agreement with a Third-Party Participant unable to provide such certification without written FTA approval.

Flow Down Requirements: The requirements flow down from MBTA to first tier contractors, who are responsible for ensuring that all lower tier contractors and sub-contractors are in compliance, without regard to the value of any subagreement.

11.25. Federal Requirements – Disadvantaged Business Enterprises

11.25.1. Policy Statement

The Massachusetts Bay Transportation Authority, hereinafter referred to as “the Authority” or “the MBTA,” has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26. The Authority has received Federal financial assistance from the USDOT, and as a condition of receiving this assistance, the Authority has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the Authority to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in contracts funded wholly or in part by USDOT funds. Further, in keeping with the spirit of growth and development, raising the bar to fulfill business needs and ensuring quality, the Authority will also provide networking opportunities, technical support, guidance and training to DBEs and contractors to support quality business partnerships.

It is the policy of the Authority to do the following:

1. Ensure non-discrimination in the award and administration of USDOT-assisted contracts.
2. Create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts.
3. Ensure that the DBE Program is narrowly tailored in accordance with applicable law.
4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate in the DBE Program.
5. Help remove barriers to the participation of DBEs in USDOT-assisted contracts.
6. Assist the development of firms that can compete successfully in the market place outside the DBE Program.

In administering the DBE Program, the Authority will not do the following:

1. Exclude any person from participation in the award and performance of any contract on the basis of age, race, color, religion, sexual orientation, disability or national origin.
2. Directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of 49 CFR Part 26.
3. Use race- or gender-conscious participation set-asides on any USDOT-assisted contracts; but, race- or gender- neutral set-asides can be used as part of the MBTA Fostering Small Business Program.

Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by the Authority in its financial assistance agreements with USDOT. The Assistant Secretary of the Office of Diversity and Civil Rights has been designated as the DBE Liaison Officer (DBELO), and has unimpeded and direct access to the General Manager. In that capacity, the Assistant Secretary is responsible for implementing all aspects of the DBE Program. The DBELO shall act in an administrative capacity in implementing the DBE Program throughout the Authority.

11.25.2. Definitions

Terms and definitions applicable to the USDOT DBE Program and these Provisions may be found at 49 CFR § 26.5 and related appendices and guidance pages.

11.25.3. Contractor Assurances

The contractor, subrecipient or any subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of the contractor or such other remedy as the Authority deems appropriate, which may include, but is not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions;
3. Liquidated damages; and / or
4. Disqualifying the contractor from future Bidding as non-responsible.

11.25.4. Required Subcontract Provisions

The contractor shall include the provisions of Section 11.25.3 - Contractor Assurances above in every subcontract, making those provisions binding on each subcontractor. The contract also shall include a copy of these Provisions, in their entirety, in every subcontract with a DBE firm which is, or may be, submitted for credit toward the contract's DBE participation goal. All subcontracts or agreements with DBEs to supply labor or materials, including but not limited to lower tier subcontracts, must be performed in accordance with these Provisions and 49 CFR Part 26.

11.26.Terms & Conditions Signature

IN WITNESS WHEREOF, the Contractor certifies under the pains and penalties of perjury that it shall comply with these MBTA Terms and Conditions under Section 11 for any applicable Contract executed with the MBTA as certified by their authorized signatory below:

Contractor Authorized Signatory:

Print Name:

(BLOCK LETTERS)

Title:

Date:

(check one)

Organization

Individual

Full legal Organization or Individual Name:	<input type="text"/>	
Doing Business As Name (If Different):	<input type="text"/>	
Tax Identification Number:	<input type="text"/>	
Address:	<input type="text"/>	
Phone:	<input type="text"/>	Fax: <input type="text"/>

12. TECHNICAL RESPONSE

12.1. Technical Response Submission

Section 1.9 details the process and specific requirements for bidder responses. Responses are due both to the MBTA offices and electronically on COMMBUYS.

Bidders responding to this RFP must fully complete, sign, and submit all Technical Response Components listed in Section 12.2. Where noted, Bidders must provide specific numbers of original documents, paper copies, and electronic files through COMMBUYS. Bidders shall not: (1) leave any section of a form blank; (2) mark any section of a form not applicable (N/A); (3) make reference to other documents; or (4) make any response conditional.

Proposal documents shall be limited to 100 pages in total, prepared in single-spaced type, on 8 ½" x 11" pages, using one side of the paper only. Pages shall be numbered to show the page number of pages in the proposal (e.g., Page 1 of 15, Page 2 of 15, etc.).

The MBTA reserves the right to request additional information for clarification purposes, either written or oral, from Bidders prior to award.

12.2. Technical Response Components

To be considered complete, the Bidder's Technical Response must include:

- Two (2) original document for items 12.2.2, 12.2.3, 12.2.4, and 12.2.6
- One (1) original document plus six (6) copies for items 12.2.1, 12.2.5, 12.2.7, 12.2.8, 12.2.9, and 12.2.10, in a 3-ring binder

12.2.1. Attachment 2: Technical Response Cover Letter

12.2.2. Signatures

A certified copy of resolution, by-law, or Power-of-Attorney authorizing an Officer or Agent to sign on behalf of the Bidder must accompany the Proposal and any Contract which may ensue.

1. If a Proposal is made by a foreign corporation, evidence of compliance with Massachusetts General Laws, c. 156D and 950 CMR 113.48 (foreign corporation certificate of registration) and 113.57 (annual report) must be given.
2. If a Proposal is made by two or more individuals, partnerships, or corporations, or any combination of these operating for the purpose of this Proposal as a Joint Venture, each party joining to make the Proposal must submit, attach to and make part of the Proposal, information and signatures in compliance with the foregoing provisions applicable to an individual, firm, partnership, or corporation.
 - a. In addition, if any of the Joint Venture is a corporation, an attested copy of the vote of the corporation authorizing such Joint Venture must be attached to the proposal.

12.2.3. Attachment 3: DBE Certification

Attachment 3 contains the Bidder certifications, affidavits, and forms that must be included with responses to indicate commitments to Disadvantaged Business Enterprise (DBE) participation.

12.2.4. Attachment 4: Technical Response Certifications

Attachment 4 contains the certifications, affidavits, and other forms that must be included with Bidder's Technical Response, including:

1. Certification: Buy America
2. Certification: Pre-Award/Post-Delivery Audits of Rolling Stock
3. Non-Collusion Affidavit
4. Certification: Debarment, Suspension, and Other Responsibility Matters
5. Certification: Debarments, Suspension, and Other Responsibility Matters for Lower Tier Participant
6. Certification: Lobbying
7. Non-Discrimination Affidavit
8. Certification: Drug and Alcohol
9. Certification: Performance Guarantee
10. Certification: Final Assembly

12.2.5. Attachment 5: Non-DBE Subcontractor List

Attachment 5 contains a form that must be included with Bidder's Technical Response, and must list all proposed Non-DBE subcontractors, contact info, and description of proposed activities/work scope.

12.2.6. Signed Contract Terms and Conditions (RFP Section 11.26)

12.2.7. Proof of Insurance

The Bidder shall include proof of insurance consistent with the requirements of Section 3.2.

12.2.8. Financial Statements

The Bidder shall provide three (3) years of audited financial statements and most recent audited quarterly financial statements, if any.

12.2.9. Introduction

An introductory letter addressed to:

Aidan Flynn
Massachusetts Bay Transportation Authority
10 Park Plaza, Suite 2810
Boston, Massachusetts 02116

An introduction of the prime contractor, members of a partnership, joint venture, or other teaming arrangement, whichever is applicable, and an introduction of all major subcontractors/subconsultants who may be involved in the performance of the work; and

A discussion of the primary business experience, length of time in business, ownership, office locations, specific location of the principal office from where the main work will be performed, contact information

(i.e., contact names, telephone and facsimile numbers, and email addresses), and other information introductory in nature for each firm involved in making the proposal.

12.2.10. Technical Proposal Requirements

1. Project Implementation Approach

- a. Project Overview – Narrative of Approach and Capabilities
 - i. Provide a description of how the Bidder plans to organize and manage the project
 - ii. Clearly demonstrate how the Bidder's experience and capabilities are suited to overhaul and deliver sixty buses in full compliance with the requirements of the Technical Specifications.
 - iii. Discuss how the Bidder will coordinate, organize and prepare all required contract deliverable requirements (CDRs) and manage the Design Review Process.
 - iv. Provide a statement confirming the Bidder has the capacity, personnel and other resources to perform the work scope within the proposed time
- b. Manufacturing Facility and Capabilities
 - i. Identify the location where the buses will be overhauled. Define the experience level of this location, the facility size, facility equipment (e.g. lifts, wash bays, paint booths, axle tools, high voltage safety equipment, other special tools), and throughput capacity.
 - ii. Identify all locations where major subassembly work will be performed
 - iii. Identify current and expected workload, backlog, and capability to implement this order within the proposed schedule.
 - iv. Detail Prime Contractor's and major suppliers' present and expected contract backlog, and how this order will "mesh" with existing and expected orders.
 - v. Describe DBE Subcontractor support required to carry out the overall project work scope and meet DBE requirements. Reference Section 11.13 and DBE Subcontractors proposed in Attachment 3.
 - vi. Describe Non-DBE Subcontractor support required to carry out the overall project work scope. Reference Section 11.13 and Non-DBE Subcontractors proposed in Attachment 5.
- c. Pilot Bus Program Plan - Design Review, Engineering/ Integration, Safety, Quality Assurance, Testing, and First Article Inspection Approach:
 - i. Provide a single flow chart on how the Pilot Bus Program efforts will be managed. Narrative should be keyed to the flow chart. The plan shall also provide details on how the design process will remain focused to meet the Final Design Review schedule and establish the Baseline Design Configuration.
 - ii. Apply your understanding of the Pilot Bus Program to the Pilot Bus Structural Inspection, New and Improved Items retrofit, Teardown, etc. and how this leads to the development of a Serial Production plan

- iii. Describe how MBTA review comments, FAI results, and testing will be fed back into the overall Design Review Process and how the changes will be integrated into Production.
- iv. Describe how the Bidder will coordinate the Design Review effort amongst the various subcontractors; that is, how the engineering and integration effort will be set up, managed, and carried out

d. Software Escrow

Submit a proposed complete Software Escrow package in line with the requirements of TS Section 2.16 to include:

- i. Qualifications of proposed Escrow Agency
- ii. Type of software storage and proposed back-up schedule
- iii. Explanation of software escrow process including point of contact information, account access, and submission of updates

e. Material Procurement and Control Procedures:

Bidder shall provide a comprehensive description of its material supply and control procedures. Describe existing material procurement control procedures implemented and proposed approach on this program.

2. Optional Work Scope

Provide a detailed proposal for the following options, including examples of successful implementation, service proven design concepts, and additional areas of interest as noted below:

- a. **OPTION 1 - Additional Corrosion Protection Application.** MBTA reserves the right to exercise an option for the Contractor to provide two (2) additional inspections / corrosion protection applications at 24-month intervals in accordance with Technical Specification VE20-051.
 - (i) Examples of successful application demonstrating corrosion resistance, weathertightness, longevity, and quality of application
- b. **OPTION 2 - Engine (Cummins) Extended Warranty.** MBTA reserves the right to exercise an option for an additional three (3) year OEM extended warranty (terms be for a total of five (5) years and 200,000 miles from the acceptance of the vehicle) on all remanufactured Cummins engines in accordance with Technical Specification VE20-051.
 - (i) Provide proposed warranty terms and conditions including information on component and maintenance requirements required to maintain the warranty.

- c. **OPTION 3** - License Plate Recognition (LPR) System. MBTA reserves the right to exercise an option to retrofit buses with a License Plate Recognition (LPR) System in accordance with Technical Specification VE20-051.
 - (i) Examples of successful application demonstrating accuracy, longevity, and quality of installation
- d. **OPTION 4** – New Destination Signs. The Contractor shall install and integrate the latest Luminator Smart Series III destination sign solution. This includes materials procurement; and installation of new front, curbside, and rear destination signs and all related subcomponents including cables and harnesses. The Contractor is responsible for all costs associated with software and hardware updates/modifications.
 - (i) Examples of successful application demonstrating accuracy, longevity, and quality of installation
- e. **OPTION 5** – Plug-in Hybrid Retrofit. The Contractor shall install and integrate a plug-in hybrid solution. This includes materials procurement; and installation of new equipment and all related subcomponents including cables, harnesses, and connectors. The Contractor is responsible for all costs associated with software and hardware updates/modifications.
 - (i) Examples of similar electrical vehicle / plug-in hybrid or relevant bus integration projects and successful application demonstrating accuracy, longevity, and quality of installation with the related projects.
 - (ii) The Technical Proposal submittal package should include feasibility study, conceptual design, proposed design configuration (e.g. parallel vs. series operation, modifications to existing configuration, software/hardware updates), PHEV ESS life expectancy, and subcontractor/sub-supplier affirmation of concept viability.
 - (iii) How will the Contractor engage the bus manufacturer, existing hybrid drive system OEM, and other component OEMs to meet PHEV bus performance requirements and optimize the system PHEV design with the existing bus configuration?
 - (iv) The Technical Proposal submittal package should include specific details on the Bus Performance in Full Electric Mode for each of the described parameters/metrics identified below (A through E):
 - A. ESS Consumption vs. Engine Speed
 - B. Acceleration vs. Time
 - C. Change of Accelerations vs. Time
 - D. Vehicle Speed vs. Time
 - E. Vehicle Speed vs. Grade (e.g. (>40 mph @ 2.5%), (>10 mph @ 10%) and (>7 mph @ 16%) for 1 min.)

Example B. Acceleration Graph Format

Maximum Start Acceleration Time on a Level Surface	
Speed (mph)	Maximum time (sec)
10	5
20	10
30	18
40	30
50	60
Top Speed	
1. Vehicle Weight = GVWR	

Please note the following assumptions must be considered when calculating performance metrics: bus operating at 68 °F at GVWR with maximum auxiliary loads, with test beginning with maximum standard operating State of Charge (SoC), and batteries not being depleted below minimum standard SoC.

- (v) Bus Performance in Full Electric Mode to be included in the technical proposal, by completing the calculations in the table provided below. Assumptions to include: bus operating at 68 °F, at GVWR, at 0% grade, Manhattan duty cycle; with maximum auxiliary loads, with test beginning with maximum standard operating SoC, and batteries not being depleted below minimum standard SoC. The Contractor's proposed battery size must meet Technical Specification Section 3.25.5 requirements.

ESS Size (kWh)	Distance Traveled in Full Electric Mode (Miles)	Time Required to Return ESS to full SoC in Hybrid Mode (Engine Run Time)	Depot Charger Power	Time Required to Return ESS to full SoC Using Depot Charger
	1		125 kW	
	2		125 kW	
	3		125 kW	
	4		125 kW	
	5		125 kW	

- f. **OPTION 6 – Overhaul of up to 156 Additional Buses.** MBTA reserves the right to exercise an option to overhaul up to an additional one hundred fifty-six (156) Hybrid 40-foot buses of a similar configuration purchased in 2016-2017 in accordance with Technical Specification VE20-051. This option would be executed at the completion of overhaul of the 60 base hybrid buses in approximately 2022. A shortened design review process may be required as part of this option

- (i) Bidders approach to implementing this Option noting differences in bus components to include pilot bus and production plan; potential changes to scope and materials; potential obstacles and how these will be overcome
- (ii) Bidders plan for smooth and seamless transition from the Base Contract, 60 Bus Overhaul, to Option 6, Overhaul of 156 buses
- (iii) Bidders plan to increase from the 1.5 buses per week production rate for the Base Overhaul of 60 buses to the requirement for 2 buses per week for the Overhaul of 156 Option 6 buses include changes in staffing, workflow, materials procurement etc.

3. Project Schedule

- a. The Bidder's project delivery schedule shall include a narrative that provides information regarding:
 - i. Assumptions used in developing the schedule. The description shall be sufficient to allow full understanding of the assumptions the Bidder has made and determined are required in order to meet the schedule requirements of the Technical Specifications and Contract Documents.
 - ii. Major component materials and supplies/equipment (including all items with lead times greater than 3 months).
 - iii. Identification of major risks to achieving the schedule.
 - iv. Identification of critical path activities.
 - v. Explanation of the organization's historic performance with regard to schedules (or separate explanations for the design and implementation efforts if this is a new team or joint venture).
 - vi. Attach Project Schedule as an appendix
- b. Serial Production Plan and Schedule:

Bidder shall demonstrate, through a single flow chart and narrative, how the serial production / overhaul effort will be managed. The narrative should be keyed to the flow chart. Factors to be addressed include:

 - i. Interface and controls between the Contractor's work stages/steps
 - ii. adherence to Baseline Design Configuration
 - iii. Serial Production flow chart showing stages where/when tasks would be performed
 - iv. Bidder's documentation resources, including all specifications and standards identified in the Technical Specifications.

4. Quality Assurance / Quality Control

- a. A flow chart and narrative shall be provided to describe the Bidder's Quality Assurance organization. The Contractor's Quality Assurance Plan shall address Section 10.1 Project Quality Assurance Plan requirements and provide details of how the Bidder's QA/QC program meets to requirements of *each* Quality Program Element (Sections 10.2 through 10.17) through each phase (Design Review, Pilot Bus, Final Design and Production) of the overhaul program.
- b. Bidder shall provide examples of work procedures and detail how these documents will be used to ensure standardization and quality during production.

5. Qualifications of Firm and Staff

a. Firm Experience and Quality of Work:

Discuss Bidder's qualifications as a business entity including past performance on transit bus overhauls of similar size and scope completed in the past ten years

b. Past Projects and References:

Provide a complete list of customers (include name, title, telephone, and email) and quantity of buses that the bidder/contractor has overhauled with similar scope and project size over the last six (6) years.

c. Staffing Plan:

Provide a staffing plan that identifies the project manager(s) and any other key technical personnel, who will be assigned to the project. Submittal should include personnel resumes. At minimum, this should include the project manager, design review team members, plant production manager, QA team members, job classifications, and production staffing levels.

Discuss the percentage of time to be committed to the project by each of the project manager(s) and designated key personnel.

d. Organization of the workforce and personnel utilization:

Submit an organization chart, identify total resources including anticipated full and part time staff levels that will be allocated to the project, for the design review process, first article inspections, production, and other key areas as deemed appropriate.

e. Non-DBE Subcontractor list (see Attachment 5)

6. Technical Description of Design Review and Production

a. Bidder shall provide their approach to each of the following:

- i. Describe structural tear down and inspection process
- ii. Describe Pilot Bus approach
- iii. Describe Production plan
- iv. Describe efficiencies in Production
- v. Describe approach to Value Engineering as it pertains to the scope of work outlined in Technical Specification VE20-051 for the Base Award and each Option

12.2.11. Exceptions, if any

Any Exceptions must be specifically related to a paragraph and/or specific part of the solicitation or technical specification. Bidder shall provide rationale in support of the exception and fully explain its impact, if any, on the performance, schedule, cost, and specific requirements of the solicitation.

Provide the rationale in table format including the content detailed below. **Failure to comply with the terms and conditions and technical requirements of the solicitation may result in the Bidder being removed from consideration for contract award.**

Solicitation Document	Paragraph/Page	Requirement	Rationale	Benefit to MBTA	Impacts On
RFP, Specifications, Exhibits, Attachments, Amendment	Applicable Document, Page, Section, Paragraph, Sentence	Identify the requirement or portion to which the exception is taken	Bidder's justification why the requirement will not be met and its alternative strategy or position	Include the benefit to MBTA if the proposed alternate strategy or position is approved	Schedule, Cost, Performance, Other

12.2.12. Promotional Literature

Bidders may provide up to eight (8) pages of promotional literature. If provided, this will not be used to score or rank proposals. Promotional literature will be included in the maximum 100 single sided page limit.

13. PRICE PROPOSAL

13.1. Price Proposal Submission

Section 1.9 details the process and specific requirements for bidder responses. Responses are due both to the MBTA offices and electronically through COMMBUYS.

The MBTA reserves the right to request additional information for clarification purposes, either written or oral, from Bidders prior to award.

13.2. Tax Exemption

The MBTA is exempt from Federal Excise Tax, including Transportation Tax, and will furnish properly executed tax exemption certificates upon request. The MBTA is also exempt from Massachusetts State Sales Tax -- Exemption Number E-042-323-989. Such taxes should not be included in Proposal prices.

As an independent Contractor, the Contractor alone shall be responsible for payment of all federal, state and local

taxes of all types and kinds applicable to such fees incurred under this Agreement.

13.3. Price Proposal Components

Bidders responding to this RFP must fully complete, sign, and submit Attachment 6: Price Proposal. Bidders shall not: (1) leave any section of the form blank; (2) mark any section of the form not applicable (N/A) unless specifically called for in the instructions; (3) make reference to other documents unless specifically called for in the instructions; or (4) make any response conditional.

Bidders must submit their Price Proposal separately from their Technical Response, as described in Section 1.9. Bidders should submit one (1) original plus three (3) copies in a separately sealed envelope. In addition, Bidders should submit both PDF and Excel versions of the Price Proposal as separate files with their response through COMMBUY'S.